United States Court of Appeals

for the Second Circuit

APPENDIX

76-7578

B

P/S

In The

United States Court of Appeals

For The Second Circuit

EDWARD BRUCKER and DANIEL R. KAPLAN, as Trustees under the Trust Agreement dated November 15, 1968, made by WILTRUD E. GADBOYS, as Grantor, CECIL G. HUSKEY, E.T. STRATTON and NORTE & CO., a partnership composed of JOSEPH C. GALDI and RITA D. GALDI,

Plaintiffs-Appellees,

vs.

THYSSEN-BORNEMISZA EUROPE N.V., THYSSEN-BORNEMISZA, INC., THYSSEN-BORNEMISZA

(Continued on Reverse)

On Appeal from the United States District Court for the Southern District of New York.

UNITED STATES COURT OF APPEALS
FILED
JAN 20 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

APPENDIX FOR APPELLANTS

Volume I, pp. 1a - 270a

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HOLDINGS, INC., MARINE MIDLAND BANK, INDIAN HEAD INC., JAMES G. FERGUSON, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALISTER, JOHN E. O'SULLIVAN, RICHARD J. POWERS, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, HERBERT E. BACHRACH, GERALD B. HUISKAMP, WHITE, WELD & CO. INCORPORATED, L. EMERY KATZENBACH, H.H. THYSSEN-BORNEMISZA, R.L. GENILLARD and CHEMICAL BANK,

Defendants-Appellees.

WILLIAM B. WEINBERGER,

Plaintiff-Appellee,

vs.

RICHARD J. POWERS, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALLISTER, JOHN E. O'SULLIVAN, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, JAMES G. FERGUSON, THYSSEN-BORNEMISZA, INC. and INDIAN HEAD INC.,

Defendants-Appellees.

SHAMROCK CORPORATION, individually, and on behalf of all holders of Common Stock and Warrants of Indian Head Inc., similarly situated,

Plaintiffs-Appellees,

vs.

INDIAN HEAD INC.; THYSSEN-BORNEMISZA GROUP N.V.; THYSSEN-BORNEMISZA, INC.; WHITE, WELD & CO. INCORPORATED; RICHARD J. POWERS; JAMES E. ROBISON; HERBERT E. BACHRACH; GERALD B. HUISKAMP; L. EMERY KATZENBACH; MARSHALL F. SMITH; H.H. THYSSEN-BORNEMISZA; R.L. GENILLARD; THYSSEN-BORNEMISZA HOLDINGS, INC. and CHEMICAL BANK,

Defendants-Appellees.

APPEAL OF MORTON P. ROME AND MARJORIE T. ROME, TRUSTEES UNDER TRUST AGREEMENT MADE NOVEMBER 22, 1954, FOR THE BENEFIT OF SALLY P. ROME,

Objectors-Appellants.

PAGINATION AS IN ORIGINAL COPY

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January 18, 1977

A. Daniel Fusaro, Esquire
Clerk, United States Court of Appeals
United States Courthouse
Foley Square
New York, New York

Re: Edward Brucker, et al., Plaintiffs v. Thyssen-Bornemisza Europe N.V. et al., Defendants
Docket No. 76-7578

Dear Mr. Fusaro:

In connection with the annexed Appendix, Lutz Appellate Printers, Inc. has advised that it is unable to reproduce on a clearer basis the following pages of the Appendix, because the original documents from which said reproduction was made are of such quality that no clearer reproduction can be effected: 103a, 114a, 115a, 201a, 202a, 203a, 204a, 205a and 206a.

In the event that the Court of Appeals should desire the reprinting thereof, we shall be glad on notice to have the same printed by a typographic process.

Respectfully yours,

EDWIN P. ROME
EPR:cp
Enclosures
CC: Messrs. Klein, Cutler, Blanc, Weinstein, Sklaver, Rosenman and Hecker.

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CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

D. C. Form No. 106 Rev. 1-1-76 CLASS ACTION grants for settlement

TITLE OF CASE	ATTORNEYS
12-11-76	For plaintiff: Austrian, Lance & Stewart, P.C. ~~280 Park Ave., NYC~~ 10017 682-5200 630 5th Ave. Rockefeller Center NYC 10020
EDWARD BRUCKER and DANIEL R. KAPLAN, as Trustees under the Trust Agreement dated November 15, 1968 made by WILTRUD E. GADBOYS, as Grantor, and CECIL G. HUSKEY, Plaintiffs, -against- INDIAN HEAD, INC., THYSSEN-BORNEMISZA EUROPE, N.V., THYSSEN-BORNEMISZA, INC., THYSSEN-BORNEMISZA HOLDINGS, INC., MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK, JAMES G. FERGUSON, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALISTER, JOHN E. O'SULLIVAN, RICHARD J. POWERS, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, HERBERT C. BACHRACH and GERARD B. HUISKAMP,	For defendant: Cravath, Swaine & Moore One Chase Manhattan Plaza New York, New York 10005 HA 2-3000 Richard J. Cutler 1211 Ave. of the Americas New York, NY 10036 764-3100 (Indian Head Inc.) Shearman & Sterling 53 Wall St. New York, NY 10005 Tel: 483-1000 (Thyssen-Bornemisza Group N.V. & Thyssen-Bornemisza)

STATISTICAL RECORD	COSTS	DEC 31	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed x	Clerk		12/31	Clerk	15 --	15 --
J.S. 6 mailed	Marshal					
Basis of Action: S.E.C. Act of 1934 (15 USC Sec. 78(a)). Recover monies from securities fraud. $12,000,000.00	Docket fee					
	Witness fees					
Action arose at:	Depositions					

EDWARD BRUCKER etc. et ano. V. THYSSEN-BORNEMISZA GROUP N.V. et al.

74 CIV 57-5

DATE	PROCEEDINGS	Date Order or Judgment Noted
De..31-74	Filed complaint and issued summons.	
01-08-75	Filed certificate of mailing of summons and complaint to: Thyssen-Bornemisza Group N.V. Prof. Mr. Heijerslaan 4 reg. mail #487491 Amstelveen, The Netherlands	
01-17-75	Filed notice to take deposition upon oral examination of Marine Midland Grace Co. of New York on 2-12th 1975.	
01-8-75	Filed return cert. # 487491 on 1-8-75	
01-21-75	Filed summons -and marchals ret. served	
	Thyssen-Bornemisza, Inc. by Blumbey on 1-20-75	
	Indian Head, Inc. by Cutter on 10- 75	
	James G. Ferguson on 1-2-75	
	James M. Flack by Mr. Cutter on 1-2-75	
	Andrew Kalman on 1-15-75	
	Paul W. McAlister by R.S. Shell on 1-9-75	
	John E. O'Sullivan On 1-8-75	
	Richard J. Powers Mr. Cutter on 1-8-75	
	James B. Robison Mr. Cutter on 1-8-75	
	Robert M. Schwarzenbach R. Cutter 1-14-75	
01-28-75	Filed notice of appearance by deft Ferguson, Flack, Kalman, McAlister, O'Sullivan Powers, Robinson and Schwarzenbach.	CS&M
01-30-75	Filed notice of appearance by Richard J. Cutler for deft Indian Head Inc,	RJC
01-31-75	Filed notice of appearance by Shearman & Sterling for defts	S&S
02-03-75	Filed stip and order extending defts. time to move or answer complaint to March 3rd, 1975. Stewart, J.	
02-18-75	Filed stip. and order of witness Marine Midland Grace Trust Co. of New York time to answer is adj. to 3-6-75. --- stewart, J.	
02-28-75	Filed stip. and order ext. defts time to answer complaint to 3-31-75	
03-05-75	Filedpltfs. affdvt. and notice of motion determining that each claim in the complaint be maintained as a class action. and for summary judg. ret. 3-27-75	
03-05-75	Filed memo. in support of above motion determining the action as a class action and for summary judgment.	
03-27-75	Filed Pltfs. and order that pltfs. motion for summary judg. and a determination that the action be maintained as a class action is ext. to 5-11-75, time which to reply is ext. to 4-11-75 and to include 4-23-75, time which to reply is ext. to include 6-6-75, oral argument on then pending motions shall be on 6-12-75. ---- Stewart J.	
03-27-75	Filed Notice, witness Marine Midland Grace Trust Co, of NY. Designate Mr. Wayne Bolin as person who consents to testify on its behalf	
04-16-75	Filed defts. statement pursuant to rule 9(g) and notice of cross-motion upon the complaint, for judgment dismissing the complaint ret. 6-12-75.	
04-16-75	Filed defts. Joint memorandum (1) in opposition to pltfs. motion for summary judg. and (11) in support of defts cross-motion for dismissal or summary judgment	
04-16-75	Filed defts. affdvt. and exhibits in support of cross-motion for summary judgment.	
05-12-75	Filed notice of change of address by Atty's for pltfs	
05-23-75	Filed pltfs. ANSWERING and REPLY affdvt. of W. Klein 11	AL&S
05-23-75	Filed plt's ANSWERING and REPLY memorandum	AL&S
05-23-75	Filed pltfs. statement pursuant to rule 9(g)	
05-27-75	Filed pltf's ANSWERING and REPLY affdvt. of William Klein 11	AL&S
05-27-75	Filed pltf's ANSWERING and REPLY memorandum	AL&S
05-27-75	Filed pltf's statement pursuant to rule 9(g)	
0-611--75	Filed affdvt. and and counterstatement puruant to rule 9(g)	C&M
06-11-75	Filed deft's joint Reply memorandum on the motions for dismissal and summary judgt	

cintinued on page -3-

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DATE	PROCEEDINGS
06-16-75	Filed deft's Exhibits, affdvt and notice of motion for an order striking certain affidavits, ret. 6-26-75.
06-16-75	Filed deft's memorandum in support of above motion to strike certain affdvts.
06-27-75	Filed pltfs memorandum in opposition to defts motion to strike certain affdvt.
06-27-75	Filed Reply memorandum in support of defts. motion to strike certain affdvts
07-14-75	Filed stip. and order that deft as changed its name to Thyssen-Bornemisza Europe N.V.--Stewart, J.
07-25-75	Filed suppl. memorandum by defts' in opposition to pltfs' motion for summary judgment and in support of defts' cross-motion for dismissal or summary judgment.
08-12-75	Filed pltf's Reply to defts. supplemental memorandum
02-23-76	Filed pltf's affdvt. and order to show cause that defts show cause why an order should not be issued in Rm. 506 on 3-4-76 at 3:30p.m. pltfs shall not be entitled to add it as party deft. to this action pursuant to rule 21 and Marine Midland Grace Trust Co. show cause why and it is ordered that personal service upon atty's for defts by delivering no later than 5:00p.m. on 2-24-76 ---Stewart, J.
02-20-76	Filed pltf Amended verified complaint
02-25-76	Filed pltfs memorandum in support of their motion for a preliminary injunction
02-03-76	Filed plts proposed findings of fact on their motion to enjoin Merger of Indian Head into Thyssen-Bornemisza Holdings, Inc.
03003-76	Filed plaintiffs Reply memorandum.
02-27-76	Filed pltfs request for admission for facts
02-27-76	Filed pltfs request for production
03-05-76	Filed Order apparently our inclusion of an application tor join Marine Midland Grace Trust Co. of NY as a deft., in the show cause order, has caused confusion. In order to avoid it, we are withdrawing that application and will make a separate motion. So Ordered---Stewart, J. m/n
03-05-76	Filed letter of William Klein 11 dated 2-26-76 endorsed by Judge Stewart for filing purposes in re-to confirming the statement in his affdvt. on the motion for preliminary injunction that the filing od the amended complaint mooted pltfs motions for class action
03-05-76	Filed stip. and order ext. defts time to answer to 3-31-76--Stewart, J.
03-11-76	Filed pltfs AMENDED COMPLAINT (Second)
03-18-76	Filed pltf. Weinberger memorandum in support of motion for consolidation and other relief.
03-18-76	Filed pltf. Weinberger affdvt and notice o motion for an order consolidating the three action pursuant to rule 42(a) ret. 4-1-76.
04-05-76	Filed stip. and order that the meeting scheduled for April 5, 1976 in chambers to report on the progress of settlement negotiations is postponed until April 12, 1976 and that answering papers to pltf. motion seeking consolidation and other relief is ext. to 4-30-76 and the ret. date for said motion is set on 5-6-76--Stewar, J
04-05-76	Filed stip. and order ext. defts time to answer to 3-31-76 and to include 4-29-76 ---Stewart J.
05-19-76	Filed stip. and order ext. all defts time to answer to 5-28-76--Stewart, J.
05-19-75	Filed stip. and order ext. time within which to serve answering papers to pltf. Weinberger's motion seekin consolidation to 6-10-76--Stewart, J. (place in 75 civ 329)
05-17-76	Filed transcript of record of proceedings dated 3-4-76
06-04-76	Filed stip. and order ext. defts time to answer the first amended complaint to 7-2-76---Stewart, J.
07-07-76	Filed stip. and order ext. defts time to answer to 8-2-76--Stewart, J.
07-27-76	Filed pltfs affdvt. in support of order certifying class and directing settlement hearing. (place in 75civ 329)
	CONTINUED ON PAGE--4-

75CIV 5755 EDWARD BRUCKER ET AL -VS INDIAN HEAD, INC ET AL JUDGE STEWART

DATE	PROCEEDINGS
07-27-76	Filed pltfs Brucker and Weinberger memorandum in support of pltfs order consented to by defts, determining the action as a class action and providing for notice and hearing of settlement (place in 75 civ 229)
07-26-76	Filed CONSENT to amended the complaint by atty's for defts ---Gagliardi, J.
07-27-76	Filed stip. and order that all references in the Second Amended Complaint and the stip. and agreement of settlement dated July 20, 1976 to defts or to defts or to deft. Thyssen-Bornemisza Europe N.V. where appropriate, shall include Thyssen-Bornemisza, N.V., the owner of one hundred percent of the common stock of Thyssen-Bornemisza, Inc. ----Gagliardi, J.
07-30-76	Filed stip. and order that the agreement is amended as indicated --Gagliardi, J.
07-30-76	Filed Amendment to stimulation and agreement of settlement as indicated---Gagliardi, J. m/n
07-22-76	Filed ORDER that, the above-captioned actions shall be maintained as a class action, for purposes of settlement only, hearing shall be held on Oct. 13, 1976 at 4:30 p.m. to determine the fees and allowance. Ordered that notice of this action and the aforesaid hearing be given as indicated herein. Notices to be published in the NY Times and the Wall St. Journal. Ordered that notice of intention to appear to be mailed to the Clerk of the Court at the post office box provided for herein. a proof of claim by 11-24-76 and copies to be served upon Attorneys listed herein ----Stewart, J. m/n
08-10-76	Filed stip. and order withdrawing pltf motion for an order consolidating without prejudice --Pierce, J.
08-10-76	Filed stip. and order withdrawing the following motion of defts Cross-motion for an order to dismiss, motion for class action and defts motion for an order striking
08-24-76	Filed affdvt. of mailingnotice of Indian Head Inc. Class Actions, proposed settlement and hearing, proof of claim to each owner appearing on such books or records on 9-27-76 by Virginia Gonzalez
08-26-76	Filed affdvt. of mailing by Rita Navas that on 8-13-76 she mailed to Individual Warrant and Commona Stockholders of record on 8-2-76 Notice of Class Action and notice and Instructions to Brokers and Nominees
08-27-76	Filed deft. affdvt. of publication
09-01-76	Filed stip. and order ext. defts time to answer the second amended complaint to 11-22-76---Stewart, J
09-14-76	Filed stip. and order ext. defts time to answer to to the second amended complaint to include 11-22-76 --Stewart, J.
09-24-76	Filed pltf. documents available for inspection to interested parties at the offices of Austrian, Lance & Stewart 630 5th Ave NYC
09-27-76	Filed Morton P. Rome and M. T Rome notice of intention to appear, object and show cause why the proposed settlement should not be approved
09-27-76	Filed M. P. and M. T. Rome brief in support of objections to proposed settlement
09-27-76	Filed affdvt. of service by Arnold I. Kalman of notice of Intention to appear and objection, and show cuase why the proposed settlement should not be approved served upon Austrian, Lance & Stewart on 9-27-76 (place in 75 civ 229 and 75 civ 1737
10-06-76	Filed affdvt. of service of proposed settlement and memorandum of law in support served upon -- Sherman & Sterling, Cravath, Swaine & Moore, Richard J. Cutler and Shea, Gould, Climenko & Casey on 10-5-76 by Philip Hurowitz
10-07-76	Filed pltf. memorandum in support of settlement Mailed letter received from Sidney Choban by cert. # 567364 dated 9-19-76 in re. to being a shareholder to atty's for the pltf.
10-08-76	Filed defts Joint memorandum in support of porposed settlement
10-12-76	Filed affdvt. of Donald M. Landis in support of proposed settlement
10-12-76	Filed pltf's answering affdvt. to objections to the proposed settlement
10-12-76	Filed pltf's memorandum of law in answer to objections to the proposed settlement.

---continued on page - 5 -

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order or Judgment Noted
10-12-76	Filed defts memorandum in response to objectiors brief opposing the proposed settlement.	
10-12-76	Filed notice of request for exclusion of convertible debenture owners by Taussig & Taussig	
10-15-76	Filed Trustees Reply brief of objectors to proposed settlement (place in 75civ 1736)	
10-14-76	Hearing held on consolidated settlement	
11-16-76	Filed MEMORANDUM OPINION #45364 upon application for approval of a proposed settlement. both pltfs and defts have submitted papers in support of the proposed settlement. The Court concludes that the settlement is fari and and reasonable, and approved---Stewart, J. m/n	
11-17-76	dated 10-13-76 also place in 76civ	
11-19-76	Filed JUDGMENT and ORDER that these actions shall proceed as class actions the terms and conditions of the settlement and merger as set forth in the stip. and agreement of settlement dated 7-20-76 as amended by the Amendement to stip. and agreement to settlement and is approved by this Court. and shall consummated as provided in the settlement agreement ----Stewart, J. m/n Judgment entered on 11-18-76--clerk	
11-19-76	Filed Transcript of record of proceedings, dated 10/13-76 & Placed in 75 229 & 75civ 1736	
11-26-76	Filed affdvt. of mailing by Rita Navas that she served notice of class action and notice and instructions to Brokers and nominees Warrant and Common Stock-holders of record on 8-2-76	
11-19-76	Filed Letter of Robert S. Blanc, III in re. proposed judgment and order dateed 11-17-76	
11-19-76	Filed notice of settlement of judgment and order of defts	
11-23-76	Filed Trustees Morton P. and Marjorie T. Rome notice of motion to alter or amend judgment (place in 75 civ 229)	
11-26-76	Filed pltf's memorandum in opposition to objections motions	
11-26-76	Filed Trustees memorandum of objectiors in support of Grant motion to alter etc, application for partial stay of judgment and order pending appeal and motion claifying and supplementing record.	
12-01-76	Filed defts' memorandum of law in response to objectors' motion to alter or amend the judgment and order.	
12-01-76	Filed defts' defts' memorandum of law in opposition to stay of judgment and order.	
11-29-76	Filed Trustees M.P. and M.T. Rome notice of appeal to the U.S.C.A for the Second Circuit from the Final Judgment of 11-19-76. Mailed copy's to Blank, Rome, Klaus & Comisky, Burce A. Hecker, Sherman & Sterling, Austrial, Lance & Stewart, Cravath, Swaine & Moore, Weinstein & Levinson, Richard J. Cutler and Wolf, Haldenstein, Adler Freeman Herz & Frank	
11-29-76	Hearing on motion to stay held before Judge Stewart See official Court Reporters Minutes	
12-06-76	Filed memo. end. on motion filed 11-23-76 Motion to alter or amend Judgment and order is denied ---Stewart, J. m/n	
12-01-76	Filed Trustees M. P. and M. T. Tome aaplication for partial stay of judgment and	
12-06-76	order pending appeal	
12-06-76	Filed memo. end. on apllication filed 12-1-76 for partial stay of judgment and order pending appeal. The application is denied--Stewart, J. m/n	
12-1-76	Filed Trustees Rome notice of motion for an order clarifying and supplementing record.	
12-06-76	Filed memo. end. on motion filed 12-1-76 for an order clarifying and supplementing record. Motion denied----------continued over	

page continued --6-

DATE	PROCEEDINGS	Date Order or Judgment Noted
	As to the two additional changes objectors request in their memorandum of law they are also denied. Our quotation of pltfs affdvt is a direct quotation, and letter from David J. Green and Co. states that they are the holders of $172,000 of Indian Head debentures---Stewart, J. m/n	
12-13-76	Trans. of record of proceedings, dated 11-29-76	
12-15-76	Filed pltfs application for fee award ret. on submission	
12-15-76	Filed pltfs memorandum of law in support of application above for fees and expenses	
12-15-76	Filed pltfs exhibit A to affdvt. supporting A.L.S. application for fee award	
12-15-76	PRE-TRIAL CONFERENCE HELD BY Judge Stewart	
12-21-76	Filed stip. and order that Debenture Transmittal Letters and accompanying documentation may be submitted to Marine Midland Bank Corporate Trust Operations 140 Broadway 12th Floor NYC and Warrant Transmittal Letters and accompanying documentation may be submitted to Chemical Bank 55 Water Street 2nd Floor North Bldg.	
12-21-76	Filed affdvt. of service by John Abate that he served Appellants Designation of Contents of Record upon all counsel as listed on exhibit A attached hereto on12-8-76	
12-21-76	Filed affdvt. of service by John Abate that he served motion to alter or amend judgment upon all counsel as listed exhibit A attached herto on 11-24-76	
12-21-76	Filed affdvt. of service by Susan B. Beck that she served a copy of motion to alter or amend judgment and order served upon counsel as listed on exhibit A attached herto on 11-23-76	
12-21-76	Filed affdvt. of service by Norman Ream memorandum of objectiors in re to motion to alter or amend judgment and order etc. upon all counsel listed on exhibit A on 11-26-76	
12-21-76	Filed affdvt. of service by John Abate that he served the memorandum of objectors in support of Grant motion to alter or amend judgment etc. upon counsel Frank Weinstein on 11-26-76	
12-28-76	Filed stipulation designating exhibits to be transmitted to the U.S.C.A.	
12-28-76	Filed notice of original record on appeal has been certified and transmitted to the U.S.C.A for the Second Circuit on 12-28-76	
01-05-77	Filed order that fixing 01-25-77 for filing of all fee applications. Lead counsel Austrian, Lance & Stewart to mail copies of this order on all parties. -- Stewart, J. m/n	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD BRUCKER and DANIEL R. KAPLAN, as Trustees under the Trust Agreement dated November 15, 1968, made by WILTRUD E. GADBOYS, as Grantor,

Plaintiffs,

-against-

THYSSEN-BORNEMISZA GROUP N.V., THYSSEN-BORNEMISZA, INC., INDIAN HEAD, INC., JAMES G. FERGUSON, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALISTER, JOHN E. O'SULLIVAN, RICHARD J. POWERS, JAMES E. ROBISON and ROBERT M. SCHWARZENBACH,

Defendants.

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74 Civ.

VERIFIED COMPLAINT

CLASS ACTION

Plaintiffs, by their attorneys, AUSTRIAN, LANCE & STEWART, P.C., complaining of the defendants, allege on information and belief (except as to Paragraph Fifth, which is alleged on knowledge):

JURISDICTION

FIRST: The jurisdiction of this Court over the claims set forth hereinbelow is invoked pursuant to Section 27 of the Securities Exchange Act of 1934, as amended, (15 USC Section 78(a)), and further under the principles of common law respecting which this Court may exercise pendent jurisdiction, all as more particularly set forth hereinbelow.

SECOND: Each claim herein is brought by the plaintiffs individually on their own behalf in their capacity as Trustees and representatively on behalf of all other persons who were holders of the 5½% Registered Convertible Subordinate Debentures due April 15, 1993 ("CONVERTIBLE DEBENTURES") of Indian Head, Inc. ("INDIAN HEAD"), who were registered owners thereof on or after September 27, 1973, and who have not exercised their right to convert and acquire INDIAN HEAD Common Stock at the rate of 25.974 shares of Common Stock for each CONVERTIBLE DEBENTURE (the foregoing constituting the "CLASS").

THIRD: Each claim herein is further brought by the plaintiffs derivatively in the right of INDIAN HEAD. Plaintiffs have not demanded of the Board of Directors of INDIAN HEAD that they cause the institution of suit upon the claims set forth herein because, upon information and belief and as more fully hereinafter alleged, the two tender offers which are the subject of this action have been consummated so that no action by the Board could any longer prevent the injury asserted herein, and further because the INDIAN HEAD Directors participated in and cooperated with the

making of the tender offers and, individually and collectively, failed to send or cause to be sent notice thereof to the Plaintiffs and the CLASS and it is unlikely that the Directors would prosecute an action against themselves upon the Plaintiffs' demand.

FOURTH: This action is properly maintainable as a class action and on behalf of this CLASS in accordance with the requirements of Rule 23(a) of the Federal Rules of Civil Procedure and of Rule 11A of the Civil Rules of this Court in that:

(a) The CLASS is so numerous as to make joinder of each of its members impossible in that the CLASS consists of more than 1,000 CONVERTIBLE DEBENTURE holders, widely scattered throughout the United States and foreign countries, whose holdings vary in amount from one thousand dollars to many thousands of dollars each, with the majority in number being holders of small amounts.

(b) Common questions of law and fact predominate over any question that may affect only individual CONVERTIBLE DEBENTURE holders, these common questions including:

(1) Whether the defendants did, in law, have an obligation to send notice and whether the defendants did, in fact, fail to send notice or to cause notice to be sent to the plaintiffs and to the CLASS:

(i) Of Defendant,

THYSSEN-BORNEMISZA GROUP N.V.'s ("TBG") September 27, 1973 tender offer to INDIAN HEAD Common Stockholders to purchase 1,100,000 shares of INDIAN HEAD COMMON STOCK (herein called "COMMON STOCK" or "the SHARES"), at $27 per share in cash ("FIRST TENDER OFFER") for a total cash price of $29,700,000.

(ii) Of TBG's July 12, 1974 tender offer to INDIAN HEAD COMMON STOCK, WARRANT and EMPLOYEE STOCK OPTION-HOLDERS ("SECOND TENDER OFFER"), to purchase:

A. for $27 a share, <u>all outstanding COMMON STOCK</u>;

B. for $2 a Warrant (later increased to $2.25), <u>all outstanding Warrants to purchase COMMON STOCK</u>;

C. Employee Stock Options, <u>whether or not exercisable</u>; (emphasis supplied).

(iii) That the defendant directors had an understanding with TBG to sell TBG 750,000 authorized but unissued shares and help it acquire more than 80% of INDIAN HEAD in exchange for TBG buying more than 530,000 shares from directors and officers for a purchase price in excess

of $14,500,000, keeping INDIAN HEAD management and directors in office and naming INDIAN HEAD's dominant stockholder and director, defendant Robison, to TBG's top policy-making Supervisory Board.

(iv) That: INDIAN HEAD first acquired 34% and then 92% of the COMMON STOCK; the CONVERTIBLE DEBENTURES and COMMON STOCK would be, and were delisted from the New York Stock Exchange and would no longer be and are not, as a practical matter, marketable securities; and defendants could convert INDIAN HEAD from a public to a private Company without sending notice to plaintiffs and the CLASS.

(v) That TBG, with the cooperation of INDIAN HEAD and its directors, was offering to purchase unexercised Warrants for COMMON STOCK and unexercised Employee Options for COMMON STOCK, but was not offering to buy the COMMON STOCK into which the DEBENTURES were convertible.

(2) Whether the acquisition of 92% of the COMMON STOCK and the de-listing of the COMMON STOCK and the CONVERTIBLE DEBENTURES drastically damaged the liquidity of the DEBENTURES, diluted their value, and depressed the value of the COMMON STOCK into which the DEBENTURES are convertible so as to virtually destroy the conversion privilege.

(3) Whether the defendants breached an obligation to the plaintiffs and to the CLASS to not adversely affect the listings of the CONVERTIBLE DEBENTURES and of the COMMON STOCK on the New York Stock Exchange.

(4) Whether the failure to send notice of the tender offers and related matters to the plaintiffs and to the CLASS at a time when any factor influencing the market price of the COMMON STOCK was a market consideration affecting also the CONVERTIBLE DEBENTURES, was manipulation of the value of the CONVERTIBLE DEBENTURES and of the COMMON STOCK.

(5) Whether the failure of the defendant directors to send notices to the plaintiffs and to the CLASS of the tender offers in which they themselves were to tender approximately 432,000 shares of common stock at $27 per share, was a breach of their fiduciary obligations to the holders of CONVERTIBLE DEBENTURES.

(c) The claims of the plaintiffs are typical of and fairly represent those of the CLASS because: the plaintiffs were the registered owners of CONVERTIBLE DEBENTURES from a time prior to the first tender offer and continuing uninterruptedly up to the present time; and plaintiffs' claims arise from the failure to send notice of the tender offers and the related matters to the CLASS, and from the same manipulative schemes and devices as affect the whole CLASS.

(d) None of the members of the CLASS would, on the basis of the facts herein alleged, have any desire or need to individually control the prosecution of separate actions, because the questions of fact and law are common to all and, in particular, because the interests of most of the members of the CLASS are so small as to prevent them from prosecuting this action.

(e) No other litigation concerning this controversy has been commenced by any members of the CLASS.

(f) The acts complained of involved the use of instrumentalities of interstate commerce, and occurred in or about or have been initiated from the City of New York; most of the parties are located in the City of New York, as are their counsel; and it is to the interests of all parties to concentrate the litigation of said claims in this District.

(g) Since the questions of law and fact are common to all members of the CLASS, there will be no difficulty in the management of a class action.

(h) Plaintiffs' counsel is generally experienced in the types of claims herein comprehended.

(i) There are no actual or potential conflicts of interest between any of the members of the CLASS because the injury to all had their genesis in the same facts from which flow the same legal consequences. All members of the CLASS have been similarly mistreated, and the representative plaintiffs are in no different situation from any other member of the CLASS, except as to the amount of damages.

THE PARTIES

FIFTH: The Plaintiffs

Plaintiffs, Trustees under the Trust Agreement dated November 15, 1968 made by Wiltrud E. Gadboys, as Grantor, purchased an aggregate of $11,000 face amount CONVERTIBLE DEBENTURES between January 22, 1969 and January 6, 1970, all of said DEBENTURES so purchased being continuously owned by them from and after the date of acquisition up to the present time.

SIXTH: The Defendants

(a) Defendant INDIAN HEAD, INC., a Delaware corporation with principal business offices at 1211 Avenue of the Americas, City and State of New York, is a broadly diversified company in containers, information technology, metal and automotive products, specialty textiles, and utilities and communications products. It operates more than 50 plants employing 17,000 people in the United States, Canada and overseas.

(b) Defendant, TBG, which acquired more than 92% of the COMMON STOCK, is an international industrial holding company with headquarters in Amstelveen, the Netherlands, and its activities include large-scale shipbuilding, transportation, distribution of natural gas, building materials production, storage, transshipment and transportation of bulk cargoes, chemicals and liquid gases, and the manufacture of agricultural machinery, tools, and sorting and packaging machinery.

(c) Defendant, THYSSEN-BORNEMISZA, INC. ("TBI"), a Maryland corporation, is a wholly-owned subsidiary of TBG, and is the record owner of the 92% of the COMMON STOCK and of INDIAN HEAD warrants which TBG purchased and transferred to TBI.

(d) The individual defendants, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALISTER, JOHN E. O'SULLIVAN, RICHARD J. POWERS, JAMES E. ROBISON and ROBERT M. SCHWARZENBACH, were at all times herein mentioned, and now are, directors of INDIAN HEAD. They tendered to TBG, for cash, at $27 per share, an aggregate of more than 400,000 shares for which they received more than $11,000,000.

(e) Defendant Robison, Chairman of the Board and a director of INDIAN HEAD for more than ten years, was Chairman of its Finance Committee, when the understanding with TBG was arranged; he and his family and associates owned more than 270,000 shares of COMMON STOCK, and after the successful completion of the FIRST TENDER OFFER, TBG appointed him to its top policy-making Supervisory Board.

(f) Defendant James G. Ferguson was at all times herein mentioned Executive Vice President of INDIAN HEAD and tendered to TBG 60,706 shares owned or controlled by him, for $1,639,062, net cash.

THE SECURITIES INVOLVED

SEVENTH: Common Stock

(a) Each share of INDIAN HEAD COMMON STOCK is entitled to one vote. Prior to the FIRST TENDER OFFER, there were approximately 5,425,000 shares of COMMON STOCK issued and outstanding, and an additional 649,350 shares reserved for

issuance to the DEBENTURE Holders, pursuant to their conversion rights (111,667 shares were also reserved for the conversion rights of preferred stockholders).

(b) The COMMON STOCK of INDIAN HEAD was listed on the New York Stock Exchange continuously to and including September 24, 1974, when it was de-listed after first being suspended from trading on or about August 30, 1974.

(c) The high and low sales prices of the COMMON STOCK on the New York Stock Exchange for the periods indicated were as follows:

	Common Stock	
Year	High	Low
1972	30-3/8	22-1/2
1973:		
First Quarter	27-1/2	20-7/8
Second Quarter	23	15-1/4
Third Quarter	25-3/4	16-1/8
Fourth Quarter	27	17
1974:		
First Quarter	22-1/4	17-5/8
Second Quarter	21-7/8	17-3/4
July 1 thru Aug. 1	23-1/4	22

(d) From and after September 24, 1974 (when the COMMON STOCK was de-listed) it was traded, but only inactively, on the over-the-counter market as follows:

1974	
September 30	15-3/4
October	18-1/2 - 15-1/2
November 30	18-3/4
December 27	18-1/2 - 19

EIGHTH: The Convertible Debenture

(a) Each 5-1/2% CONVERTIBLE SUBORDINATED DEBENTURE due April 15, 1973, is registered in the name of the owner thereof; is part of an original issue in the aggregate principal amount of $25,000,000, the conversion of all of which would result in the issuance of 649,350 shares of COMMON STOCK, and more than $15,000,000 principal amount are now outstanding.

(b) Each $1,000 CONVERTIBLE DEBENTURE is convertible at any time at the option of the holder at the conversion rate of 25.974 shares of COMMON STOCK; redeemable in 1974 at 103.85%; with a sinking fund to start in 1979 of $1,250,000 principal amount of DEBENTURES per annum.

(c) The Indenture Agreement, dated as of April 15, 1968, under which the CONVERTIBLE DEBENTURES were issued ("INDENTURE") requires that notices to each DEBENTURE Holder be mailed to him at his last address appearing on the registration books of INDIAN HEAD.

(d) The INDENTURE contains anti-dilution provisions requiring that such notice be mailed to the DEBENTURE Holders of stock dividends, reclassifications and like changes in the COMMON STOCK structure and adjustments in the conversion rate reflecting such changes (Section 5.04).

(e) The INDENTURE requires (Section 5.06) that in the event of consolidation, merger, sale or other disposition of all or substantially all Company property:

(i) a Supplemental Indenture be executed "providing that the holder of each Debenture then outstanding shall have the right thereafter to convert such Debenture into the kind and amount of shares of stock and other securities and property receivable upon such consolidation, merger, sale, lease or other disposition by a holder of the number of shares of COMMON STOCK of the Company into which such Debenture might have been converted immediately prior to such consolidation, merger, sale or other disposition", and

(ii) written notice by first class mail of such Supplemental Indenture shall be sent to each DEBENTURE Holder. (See 12.02).

(f) The CONVERTIBLE DEBENTURES were traded on the New York Stock Exchange prior to the FIRST TENDER OFFER and continuously thereafter until about August 30, 1974, when trading was suspended; they were de-listed on September 24, 1974; and since have been traded, but only inactively, on the over-the-counter market, as follows:

1974	High	Low
September	48	42
October	50	45
November	54	50
December	57	50

(g) The high and low sales prices of the CONVERTIBLE DEBENTURES on the New York Stock Exchange for the periods indicated were as follows:

	High	Low
1972	96-1/2	80
1973	87-5/8	61-1/2
1974 to June 30	71	61-3/4
1974 July	69-1/2	65-1/2

THE FACTS

NINTH: The First Tender Offer

(a) On September 19, 1973, prior to the first tender offer, INDIAN HEAD and TBG entered into a "Memorandum of Understanding" under which INDIAN HEAD:

(i) agreed to sell TBG 750,000 of its authorized but unissued shares at $27 per share;

(ii) agreed to cooperate with TBG in the FIRST TENDER OFFER, and

(iii) TBG agreed to buy from the directors up to 50,000 of their shares, and to name Robison to the TBG Supervisory Board (which makes TBG policy), if the FIRST TENDER OFFER succeeded.

(b) On September 27, 1973, TBG made the FIRST TENDER OFFER to INDIAN HEAD Common Stockholders to purchase a maximum of 1,100,000 shares at $27 per share.

(c) The FIRST TENDER OFFER terminated on October 10, 1973, with TBG purchasing for cash 1,200,000 (instead of 1,100,000) shares from the Common Stockholders, and 750,000 shares from INDIAN HEAD, giving it approximately 34% of the COMMON STOCK for which it paid, in cash, more than $50,000,000.

(d) Robison was thereafter named to TBG's top policy-making Supervisory Board.

(e) Defendant directors sold approximately 67,000 of their shares to TBG for a total of more than $1,809,000.

TENTH: The Second Tender Offer

(a) Prior to July 12, 1974 INDIAN HEAD and its directors agreed to cooperate with TBG to enable TBG to acquire all of the issued and outstanding COMMON STOCK, and unexercised Warrants to buy COMMON STOCK, and certain unexercised employee stock options, and TBG agreed to buy from the defendant directors all of their COMMON STOCK which they desired to tender.

(b) On July 12, 1974, TBG sent the SECOND TENDER OFFER "To the Holders of Common Stock and Warrants to Purchase Common Stock of INDIAN HEAD, INC.," to purchase:

(1) "all outstanding shares of Common Stock, $1.00 par value (the "Common Stock"), of INDIAN HEAD, INC. (the "Company") from the holders thereof at $27 per share in cash net to the seller"; and

(2) "all the outstanding Warrants to purchase shares of Common Stock of the Company (the "Warrants") from the holders of such Warrants at $2 per Warrant in cash net to the seller..." (emphasis supplied).

(c) The SECOND TENDER OFFER also provided that TBG would purchase unexercised Employee Stock Options where the exercise price was less than $27 per share, for the excess of $27 over the exercise price, in cash.

(d) TBG committed to pay an aggregate of $105,121,777 for all of said outstanding shares and warrants, plus a maximum additional $910,000 for employee common stock options.

(e) The SECOND TENDER OFFER disclosed to the Common Stockholders and Warrant Holders that INDIAN HEAD directors, including defendant directors, owned and proposed to tender INDIAN HEAD COMMON STOCK, as follows:

	Owned (after Proposed Gifts and Transfers)	To Be Tendered	To Be Retained
James M. Flack	94,524	64,524- 84,524	30,000- 10,000
Andrew Kalman	116,184	80,000-100,000	36,184- 16,184
Paul W. McAlister	71,343	50,000- 60,000	21,343- 11,343
John E. O'Sullivan	33,624	20,000- 30,000	13,624- 3,624
Richard J. Powers	17,325	8,000- 11,000	9,325- 6,325
James E. Robison	263,152	80,000-100,000	183,152-163,152
Robert M.Schwarzenbach	73,724	30,000- 50,000	43,724- 23,724
Marshall F. Smith	4,623	0- 2,300	4,623- 2,323

(f) Pursuant to the SECOND TENDER OFFER, which expired on August 19, 1974, TBG acquired for an aggregate cash price of $99,549,000, 3,687,000 shares which it later transferred to TBI, along with the 1,950,000 previously acquired shares.

(g) Continuously since August 19, 1974, TBG or TBI have owned at least approximately 92% of the approximate 6.1 million shares of COMMON STOCK outstanding, for which TBG paid in cash a total of more than $150,000,000.

(h) Upon consummation of the SECOND TENDER OFFER, INDIAN HEAD officers and directors, as a group, had tendered, in both tender offers, more than 542,000 shares for which they received approximately $14,634,000, of which defendant directors tendered 432,069 shares and defendant Ferguson had tendered 60,706 shares.

FIRST CLAIM

ELEVENTH: This first claim arises under Sections 14(d) and 14(e) ("Williams Act") and 10(b) of the Act (15 USC 78n (d), (e) and 78(j), and Rule 10b-5 of the Rules and Regulations thereunder.

TWELFTH: The conversion privilege of the CONVERTIBLE DEBENTURES afforded plaintiffs and the CLASS an option to purchase

the COMMON STOCK so that they were members of the Common Stockholder CLASS within the meaning, purpose and intent of the Williams Act.

THIRTEENTH: The defendants, in failing to send or cause to be sent to plaintiffs and the CLASS notice of the tender offers, violated Sec. 14(d)(1) and (6) of the Act.

FOURTEENTH: The failure of the defendants to send or cause to be sent notice to plaintiffs and the CLASS of the FIRST and SECOND TENDER OFFERS represented:

(a) Fraudulent, deceptive and manipulative acts and practices in connection with the tender offers and manipulative and deceptive devices and contrivances in connection with the purchase and sale of a security; and

(b) A device, scheme and artifice to defraud and an act, practice or course of business which operated as a fraud and deceit upon plaintiffs and the CLASS in connection with the purchase or sale of a security in violation of Sec. 10(b) of the Act and Rule 10b-5 of the Rules and Regulations thereunder.

FIFTEENTH: As a result of said violations:

(a) Plaintiffs and the CLASS were deprived of the opportunity to tender the COMMON STOCK into which they were entitled to convert their DEBENTURES; and

(b) the nature of the CONVERTIBLE DEBENTURES was drastically and adversely altered; and

(c) the value of the CONVERTIBLE DEBENTURES and of the COMMON STOCK into which they are convertible was drastically reduced; and

(d) for all practical purposes, the CONVERTIBLE DEBENTURES and the COMMON STOCK are no longer marketable securities; and

(e) defendants have effected constructive consolidation of INDIAN HEAD with TBI, in violation of the INDENTURE.

SIXTEENTH: By reason of the foregoing:

(a) Plaintiffs and the CLASS have incurred damages in excess of $12,000,000, namely, the amount of the present value of the tender offer price for the COMMON STOCK into which the CONVERTIBLE DEBENTURES are convertible, less the net amount actually received by any CLASS member who sold his DEBENTURES, plus interest, upon surrender of their DEBENTURES, and are entitled to have said tender offers extended to them.

(b) INDIAN HEAD is entitled to such damages as it suffered because TBG, TBI and the individual defendants have abused their authority to control INDIAN HEAD, and its misconduct was therefore the misconduct of TBG, TBI and any individual defendants who are obligated to indemnify INDIAN HEAD therefore.

SECOND CLAIM

SEVENTEENTH: This Second Claim arises under Sections 14(d), (14(e) and 10(b) of the Act, 15 USC 78n(d) and 78(j) and Rule 10b-5 of the Rules and Regulations thereunder.

EIGHTEENTH: Neither INDIAN HEAD nor TBG sent or caused to be sent any notice of the SECOND TENDER OFFER to plaintiffs and the CLASS.

NINETEENTH: Between October 1973 and August 1974, INDIAN HEAD and TBG, aided and abetted by the other defendants, failed to send or cause to be sent any notice to plaintiffs or the CLASS about material matters, including that:

(a) In October, 1973, TBG had acquired approximately 34% of the COMMON STOCK from the Common Stockholders and INDIAN HEAD for approximately $50,000,000 in cash.

(b) INDIAN HEAD and TBG had an understanding that INDIAN HEAD would cooperate with TBG in TBG's acquisition of all the COMMON STOCK and TBG would buy more than 500,000 shares from INDIAN HEAD directors and officers, and name defendant Robison to TBG's Supervisory Board.

(c) Defendant directors and officers proposed to tender more than 450,000 shares of their COMMON STOCK for more than $12,000,000 net cash.

(d) That defendant directors and officers: after having represented in the FIRST TENDER OFFER that they would tender a maximum of 50,000 shares in fact tendered 67,000 shares; extended the SECOND TENDER offering period, which was to terminate on August 2, 1974, to August 19, 1974, in order to enable them to determine the success of the SECOND TENDER OFFER before tendering their own shares, a substantial portion of which were not tendered until after August 2, 1974; likewise tendered in the SECOND TENDER OFFER more shares than they had represented they would tender.

(e) Upon the successful completion of the SECOND TENDER OFFER, the COMMON STOCK and the CONVERTIBLE DEBENTURES would be de-listed from the New York Stock Exchange.

(f) Said de-listing would have a material adverse affect on the value of the CONVERTIBLE DEBENTURES.

(g) The proposed acquisition of more than 80% of the COMMON STOCK (and the actual acquisition of approximately 92% of the COMMON STOCK), violated the INDENTURE under which the CONVERTIBLE DEBENTURES were issued, because they constituted, in effect, a merger or consolidation, notice of which was required to be sent to plaintiffs and the CLASS under the INDENTURE.

(h) The holders of unexercised Warrants and Employee Stock Options were given notice and tendered, while plaintiffs and the CLASS, with a similar unexercised right to acquire COMMON STOCK as the Warrant and Employee Stock Option Holders, were denied that opportunity.

TWENTIETH: Since August 19, 1974, INDIAN HEAD and TBG, aided and abetted by the other defendants, have failed to send or cause to be sent any notice to plaintiffs or the CLASS that TBG had acquired approximately 92% of the COMMON STOCK, all of which has been transferred to TBI; that directors and officers had sold to TBG approximately 542,000 shares for more than $14,600,000; that the defendant directors alone had sold to TBG an aggregate of more than 432,000 shares for more than $11,000,000, while defendant Ferguson sold 60,706 shares for $1,639,062; that the COMMON STOCK and CONVERTIBLE DEBENTURES would be and were de-listed from the New York Stock Exchange; and that under Delaware law TBG had the right to cause INDIAN HEAD to be merged out of existence without a stockholders' meeting or stockholders' consent which would have a materially adverse effect on plaintiffs and the CLASS.

TWENTY-FIRST: All of the defendants failed to send or cause to be sent to plaintiffs and the CLASS at any time, any notice:

(a) of the SECOND TENDER OFFER and of the material facts relating thereto as herein alleged; and

(b) that as a result of the successful consummation of the SECOND TENDER OFFER, the marketability of the CONVERTIBLE DEBENTURES would be virtually eliminated, and plaintiffs and the CLASS would be unable to freely trade them.

TWENTY-SECOND: By virtue of the foregoing, defendants:

(a) engaged in fraudulent, deceptive and manipulative acts and practices in connection with both tender offers, in violation of the Williams Act, (Section 14(e)).

(b) employed devices, schemes and artifices to defraud and engaged in acts and practices in the course of business which operated as a fraud and deceit upon plaintiffs and the members of the CLASS, in connection with the purchase and sale of securities all in violation of Section 10(b) of the Act and Rule 10b-5 therein.

TWENTY-THIRD: By reason of the foregoing:

(a) Plaintiffs and the CLASS have incurred damages in excess of $12,000,000, namely, the amount of the present value of the tender offer price for the COMMON STOCK into which the CONVERTIBLE DEBENTURES are convertible, less the net amount actually received by any CLASS member who sold his DEBENTURES, plus interest, upon surrender of their DEBENTURES, and are entitled to have said tender offers extended to them.

(b) INDIAN HEAD is entitled to such damages as it suffered because TBG, TBI and the individual defendants have abused their authority to control INDIAN HEAD, and its misconduct was therefore the misconduct of TBG, TBI and any individual defendants who are obligated to indemnify INDIAN HEAD therefore.

THIRD CLAIM

TWENTY-FOURTH: This Third Claim arises under Sections 14(d), 14(e) and 10(b) of the Securities Exchange Act of 1934, ("Act") 15 USC 78n(d) (e) and 78(j) and Rule 10b-5 of the Rules and Regulations thereunder.

TWENTY-FIFTH: Neither TBG nor INDIAN HEAD sent any notice of the FIRST TENDER OFFER to plaintiffs or the other members of the CLASS.

TWENTY-SIXTH: INDIAN HEAD and TBG aided and abetted by the other defendants, failed to send or cause to be sent any notice to plaintiff and the CLASS, about material matters, including:

(a) of defendant Robison's arrangement with TBG;

(b) that INDIAN HEAD and TBG had entered into the agreement of September 19, 1973;

(c) that INDIAN HEAD and its directors and TBG had an understanding that TBG would purchase shares of COMMON STOCK for cash at $27 per share owned by the directors and officers if tendered in the FIRST TENDER OFFER;

(d) TBG was aiding and abetting INDIAN HEAD and its directors, including the defendant directors, by failing to send to plaintiffs and the CLASS notice of the said arrangements and understanding and of the FIRST TENDER OFFER.

TWENTY-SEVENTH: By virtue of the foregoing, defendants:

(a) engaged in fraudulent, deceptive and manipulative acts and practices in connection with both tender offers, in violation of the Williams Act (Section 14(e));

(b) employed devices, schemes and artifices to defraud and engaged in acts and practices in the course of business which operated as a fraud and deceit upon plaintiffs and the members of the CLASS, in connection with the purchase and sale of securities all in violation of Section 10(b) of the Act and Rule 10b-5 therein.

TWENTY-EIGHTH: By reason of the foregoing:

(a) Plaintiffs and the CLASS have incurred damages in excess of $12,000,000, namely, the amount of the present value of the tender offer price for the COMMON STOCK into which the CONVERTIBLE DEBENTURES are convertible, less the net amount actually received by any CLASS member who

sold his DEBENTURES, plus interest, upon surrender of their DEBENTURES, and are entitled to have said tender offers extended to them.

(b) INDIAN HEAD is entitled to such damages as it suffered because TBG, TBI and the individual defendants have abused their authority to control INDIAN HEAD, and its misconduct was therefore the misconduct of TBG, TBI and any individual defendants who are obligated to indemnify INDIAN HEAD therefore.

FOURTH CLAIM

TWENTY-NINTH: This Fourth Claim is brought by plaintiffs under the common law of which this Court has pendent jurisdiction.

THIRTIETH: The individual defendant directors of INDIAN HEAD and INDIAN HEAD Executive Vice President Ferguson, and TBG, from and after its acquisition of approximately 34% control of INDIAN HEAD, owed a fiduciary duty to plaintiffs and the CLASS.

THIRTY-FIRST: In or about September 1973, defendants entered into a conspiracy pursuant to which defendant Robison and INDIAN HEAD and its other directors, including the other defendant directors, agreed to aid and abet TBG in acquiring

more than 80% control of INDIAN HEAD, in exchange for the agreement of TBG to the purchase for cash at $27 per share of shares of COMMON STOCK owned by directors and officers, and further, for the agreement of TBG to name defendant Robison to TBG's top policy-making Supervisory Board and to retain the management and directors of INDIAN HEAD in such capacities indefinitely.

THIRTY-SECOND: INDIAN HEAD and the directors, including the defendant directors, agreed to aid and abet TBG in acquiring control of INDIAN HEAD without TBG having to purchase any of the COMMON STOCK underlying the CONVERTIBLE DEBENTURES, or INDIAN HEAD's CONVERTIBLE PREFERRED STOCK SERIES A which is convertible into 3.15 shares and for which 111,667 shares are reserved for conversion.

THIRTY-THIRD: Pursuant to said conspiracy, defendants, singly and in concert, breached and caused to be breached, the notice provisions of both the INDENTURE, and of the Act, and the purpose and intent of both, by failing and refusing to send to plaintiffs and the CLASS notice of TBG's proposed and actual takeover of INDIAN HEAD.

THIRTY-FOUR: In furtherance of said conspiracy the defendant directors benefited themselves by selling their COMMON STOCK to TBG for more than $11,000,000 in cash, defendant

Ferguson benefited himself to the extent of $1,627,695, while none of them made any effort to enable plaintiffs and the CLASS to enjoy similar benefits and denied to plaintiffs and the CLASS such benefits; and defendant Robison secured his appointment to the TBG Supervisory Board, which he obtained by virtue of his control and use of INDIAN HEAD.

THIRTY-FIFTH: By reason of the foregoing, TBG was enabled to substantially reduce its purchase price, which would have been increased by more than 17% if it had tendered for the 649,350 shares reserved for conversion of the original $25,000,000 Debenture issue (and by over $3,000,000 more had it tendered for the 111,667 shares reserved for the Preferred Stock).

THIRTY-SIXTH: As a result of the foregoing:

(a) INDIAN HEAD and its directors, including the defendant directors, breached the INDENTURE under which the DEBENTURES were issued; the contract represented by the DEBENTURES; and the fiduciary obligations they owed to plaintiffs and the CLASS;

(b) TBG aided and abetted INDIAN HEAD and the directors, including the individual defendants, in breaching the INDENTURE, DEBENTURE, and the fiduciary obligations owed by INDIAN HEAD and the directors, including the individual defendants, to plaintiffs and the CLASS.

(c) From and after its acquisition of approximately 34% of the COMMON STOCK, TBG violated the fiduciary obligations it owed as control stockholder of INDIAN HEAD, to plaintiffs and the CLASS.

(d) From and after TBG's acquisition of a total of approximately 92% of the COMMON STOCK, TBG has violated and continues to violate the fiduciary obligations it owed to plaintiffs and the CLASS.

(e) TBI, as the wholly-owned subsidiary and assignee of TBG, stands in the shoes of TBG and has violated and violates the fiduciary obligation it owes to plaintiffs and the CLASS, all to the irreparable injury and damage of plaintiffs and the CLASS.

THIRTY-SEVENTH: Plaintiffs and the CLASS have incurred damages in excess of $12,000,000, namely, the amount of the present value of the tender offer price for the COMMON STOCK into which the CONVERTIBLE DEBENTURES are convertible, less the net amount actually received by any CLASS member who sold his DEBENTURES, plus interest, upon surrender of their DEBENTURES, and are entitled to have said tender offers extended to them.

THIRTY-EIGHTH: By reason of the foregoing:

(a) Plaintiffs and the CLASS are entitled to such other and additional and punitive damages as

may be determined; and

(b) INDIAN HEAD is entitled to such damages as it suffered because TBG, TBI and the individual defendants control it and its misconduct was therefore the misconduct of TBG, TBI and the individual defendants.

WHEREFORE, plaintiffs demand judgment against defendants, as follows:

1. Requiring TBG:

(a) to tender and to pay to all present Debenture Holders who desire to tender their debentures, the present value of the $27 per share cash tender offer for the COMMON STOCK into which such Debenture Holders are entitled to convert (tender offer), plus interest at the prime rate in effect by The Chase Manhattan Bank N.A. on July 12, 1974;

(b) to pay to each and every person who was a registered owner of convertible debentures at any time on and after September 27, 1973, and who thereafter sold any Debenture or Debentures, the difference between the present value of the $27 per share tender offer, and the net proceeds of any such sale, plus interest at the prime rate in effect by The Chase Manhattan Bank N.A. on July 12, 1974.

2. That plaintiffs and the CLASS be awarded punitive damages as to this Court may be just and proper.

3. Pending such payment, defendants, their officers, agents, servants, employees, attorneys and those persons acting in concert or in participation with them, or each of them, be enjoined from causing or permitting INDIAN HEAD or its business or assets to be merged, consolidated with or otherwise acquired by TBG, TBI, or any company or entity owned or controlled by them.

4. That the Court award reasonable counsel fees to the attorneys and counsel, and reasonable expert fees for plaintiffs.

5. That the CLASS be awarded interest on the damages incurred by them.

6. That plaintiffs be awarded costs and disbursements incident to the prosecution of its action, together with all sums awarded, with interest from September 27, 1973.

7. That plaintiffs receive such other and further relief that may be proper and equitable in the premises.

Dated: New York, New York
December 31, 1974.

AUSTRIAN, LANCE & STEWART, P.C.
Attorneys for Plaintiffs
280 Park Avenue
New York, New York 10017
Tel: (212) 682-5200

By: William Lance II
A Member of the Firm

STATE OF NEW YORK)

COUNTY OF NEW YORK) SS:

EDWARD BRUCKER, as a Trustee under the Trust Agreement dated November 15, 1968 made by Wiltrud E. Gadboys, as Grantor, being duly sworn, deposes and says that he resides at 105 Cliffside Drive, Yonkers, New York, 10710, and is one of the Plaintiffs named in the within action; that he has read the foregoing Verified Complaint and knows the contents thereof; that the same is true to his own knowledge, except as to the matters contained therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

Edward J. Brucker

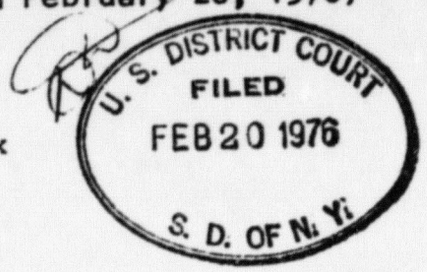
Sworn to before me this
31st day of December, 1974.

Harold L. Kramer

HAROLD L. K...
N...

AMENDED VERIFIED COMPLAINT (Filed February 20, 1976)
(pp. 39a-83a)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



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EDWARD BRUCKER and DANIEL R. KAPLAN, as Trustees under the Trust Agreement dated November 15, 1968 made by WILTRUD E. GADBOYS, as Grantor,

Plaintiffs,

-against-

JAMES G. FERGUSON, JAMES M. FLACK, ANDREW KALMAN, MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK, PAUL W. McALISTER, JOHN E. O'SULLIVAN, RICHARD J. POWERS, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, INDIAN HEAD, INC., THYSSEN-BORNEMISZA EUROPE, N.V., THYSSEN BORNEMISZA, INC. and THYSSEN-BORNEMISZA HOLDINGS, INC.

Defendants.

Civil Action File No.
74 Civ. 5755
(CESJr.)

AMENDED VERIFIED COMPLAINT

CLASS ACTION

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Plaintiffs, by their attorneys, AUSTRIAN, LANCE & STEWART, P.C., complaining of the defendants, allege on information and belief (except as to Paragraph FOURTH, which is alleged on knowledge):

JURISDICTION

FIRST: The jurisdiction of this Court over the claims set forth hereinbelow is invoked pursuant to Section 27 of the Securities Exchange Act of 1934, as amended, ('34 Act), (15 USC Section 78(a)), Section 22 of the Securities Act of 1933, as amended, ('33 Act), (15 USC Section 77(a)) and further under the principles of common law respecting which this Court may

exercise pendent jurisdiction, all as more particularly set forth hereinbelow.

CLASS ACTION ALLEGATIONS

SECOND: (1) Each claim herein is brought by the plaintiffs individually on their own behalf in their capacity as Trustees and representatively on behalf of all other persons who, on or after September 27, 1973, were registered or beneficial owners of the 5 1/2% Registered Convertible Subordinate Debentures due April 15, 1993 ("CONVERTIBLE DEBENTURES") of INDIAN HEAD, INC. ("INDIAN HEAD"), or those who succeeded to their rights ("OWNERS"), and who did not exercise the right to convert the CONVERTIBLE DEBENTURES, (the foregoing constituting the "CLASS").

(2) In addition, the FIFTH CLAIM herein is brought on behalf of all COMMON STOCKHOLDERS of INDIAN HEAD ("STOCKHOLDER CLASS") and all owners of outstanding Warrants to purchase shares of COMMON STOCK of INDIAN HEAD ("WARRANT CLASS"), as well as on behalf of the CLASS.

THIRD: This action is properly maintainable as a class action on behalf of each class in accordance with the requirements of Rule 23(a) of the FEDERAL RULES OF CIVIL PROCEDURE and of Rule 11A of the CIVIL RULES of this Court in that:

A. Each class is so numerous as to make joinder of each of its members impossible in that: [i] the CLASS consists

of more than 1,000 OWNERS widely scattered throughout the United States and foreign countries, whose holdings vary in amount from one thousand dollars to many thousands of dollars each, with the majority in number being holders of small amounts; [ii] the STOCKHOLDER CLASS and the WARRANT CLASS each consist of thousands of stockholders and thousands of warrantholders respectively, widely scattered throughout the United States and foreign countries, whose holdings vary in amount from a few shares and a few warrants to thousands, with the majority in number being holders of small numbers of shares and warrants.

B. (1) All Claims - THE CLASS:

Common questions of law and fact predominate over any question that may affect only individual OWNERS, these common questions including:

(a) Whether the acquisition by defendant THYSSEN BORNEMISZA EUROPE, N.V. ("TBE"), a foreign company, through a wholly owned American subsidiary of more than 90% of INDIAN HEAD's issued and outstanding common stock ("COMMON STOCK") and the delisting of the CONVERTIBLE DEBENTURES and COMMON STOCK from the New York Stock Exchange constituted violations of the INDENTURE dated April 15, 1968 between INDIAN HEAD and MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK ("MARINE"), Trustee under which the CONVERTIBLE DEBENTURES were issued ("INDENTURE"), creating an event of default under the INDENTURE, so that the principal and accrued interest of all outstanding CONVERTIBLE DEBENTURES became due and payable immediately.

(b) Whether the proposed merger of INDIAN HEAD into TBE's wholly owned subsidiary violates the INDENTURE, creating an event of default thereunder so that the principal and accrued interest of all outstanding CONVERTIBLE DEBENTURES became due and payable immediately.

(c) Whether the offer to pay cash for each CONVERTIBLE DEBENTURE constitutes an offer to redeem, under the INDENTURE, to which the 1976 Redemption Price in the CONVERTIBLE DEBENTURE of 103.30% applies.

(d) Whether the defendants did, in law, have an obligation to send notice and whether the defendants did, in fact, fail to send notice or to cause notice to be sent to the plaintiffs and to the CLASS of the tender offer for COMMON STOCK of September 27, 1973; the tender offer of July 12, 1974 for all INDIAN HEAD COMMON STOCK, Warrants and Employee Stock Options; the prospective de-listing from the New York Stock Exchange of the CONVERTIBLE DEBENTURES and COMMON STOCK; the bid for control of INDIAN HEAD by defendant TBE; and of the other material information contained in the Statutory notices sent to the tender offerees.

(e) Whether the conduct of the defendants was a breach of their fiduciary obligations to the holders of CONVERTIBLE DEBENTURES.

(f) Whether defendant MARINE breached its obligations under the INDENTURE to the OWNERS by failing to notify them of the tenders and prospective delisting,

and thereafter by failing to declare a default under the INDENTURE and that the principal and accrued interest thereon immediately became due and payable.

(2) FIFTH CLAIM - CLASS, STOCKHOLDERS CLASS AND WARRANT CLASS:

Common questions of law and fact predominate in the FIFTH CLAIM over any question that may affect only individual OWNERS, STOCKHOLDERS or WARRANT HOLDERS, these common questions including:

(a) Whether the merger is a manipulative and deceptive device in breach of the Federal Securities laws designed to freeze out the STOCKHOLDERS, the WARRANT HOLDERS and the OWNERS at grossly unfair prices.

(b) Whether in proposing and seeking to effect the merger, the corporate defendants, other than MARINE, and the individual defendants, breached the fiduciary duty each owe to the STOCKHOLDERS, WARRANT HOLDERS and OWNERS.

(c) Whether the merger has no business purpose and therefore violates and unfairly diminishes the rights of the STOCKHOLDERS, WARRANT HOLDERS and OWNERS to enjoy fully, without let or hindrance, their interests in their securities and their right thereby to participate in the growth of INDIAN HEAD.

C. (1) All Claims - THE CLASS:

The claims of the plaintiffs are typical of and fairly represent those of the CLASS because: the plaintiffs

were the registered owners of CONVERTIBLE DEBENTURES from a time prior to the FIRST TENDER OFFER and continuing uninterruptedly up to the present time; and plaintiffs' claims arise from the delisting of the CONVERTIBLE DEBENTURES and COMMON STOCK and acquisition of more than 90% of the COMMON STOCK and resultant constructive destruction of the conversion privilege, as well as the failure to send notice of the tender offers and the related matters to plaintiffs and the CLASS, and from the same manipulative schemes and devices as affect the whole CLASS.

(2) FIFTH CLAIM - CLASS, STOCKHOLDERS CLASS AND WARRANT CLASS:

The claims of plaintiffs are typical of and fairly represent those of the CLASS, the STOCKHOLDERS CLASS and the WARRANT CLASS because: plaintiffs' FIFTH CLAIM arises from the proposed merger and the resultant freeze out at grossly unfair prices which affects equally plaintiffs, all OWNERS, all STOCKHOLDERS and all WARRANT HOLDERS. The proposal seeking to effect the merger involves the same breach of fiduciary duty by the corporate defendants, other than MARINE, and the individual defendants, which is owed by each of them to all members of the CLASS, the STOCKHOLDERS CLASS and the WARRANT CLASS, and the merger involves the same unlawful manipulative schemes and devices affecting the CLASS, the STOCKHOLDERS CLASS and the WARRANT CLASS.

D. CLASS, STOCKHOLDERS CLASS and WARRANT CLASS:

None of the members of the CLASS, STOCKHOLDERS CLASS or WARRANT CLASS, would, on the basis of the facts herein alleged, have any desire or need to individually control the

prosecution of separate actions, because the questions of fact and law are common to all and, in particular, because the interests of most of the members of each Class are so small as to prevent them from prosecuting this action.

E. Subsequent to the filing of the original Complaint herein: [i] a second action was commenced, purportedly on behalf of a member of the CLASS; [ii] an action was commenced on behalf of Warrant Holders, claiming that the July 12, 1974 tender offer to Warrant Holders was false and misleading.

F. The acts complained of involved the use of instrumentalities of interstate commerce, and occurred in or about or have been initiated from the City of New York; most of the parties are located in the City of New York, as are their counsel; and it is to the interests of all parties to concentrate the litigation of said claims in this District.

G. As to all claims, the questions of law and fact are common to all members of the CLASS and as to the FIFTH CLAIM, the questions of law and fact are common to all members of the CLASS, STOCKHOLDERS CLASS and WARRANT CLASS and therefore there will be no difficulty in the management of a class action.

H. Plaintiffs' counsel is generally experienced in the types of claims herein comprehended.

I. (1) <u>All Claims - THE CLASS:</u>

There are no actual or potential conflicts of interest between any of the members of the CLASS because the injury to all had their genesis in the same facts from which flow the same legal consequences. All members of the CLASS have been

similarly mistreated, and the representative plaintiffs are in no different situation from any other member of the CLASS, except as to the amount of damages.

(2) FIFTH CLAIM - CLASS, STOCKHOLDERS CLASS AND WARRANT CLASS:

There are no actual or potential conflicts of interest between any members of the CLASS, STOCKHOLDERS CLASS or WARRANT CLASS because the injury to all has its genesis in the merger, the same facts from which flow the same legal consequences to the members of each of the three Classes. All members of each Class have been similarly mistreated and the representative plaintiffs are in no different situation from any other member of any of the three Classes except as to the nature of relief.

THE PARTIES

FOURTH: The Plaintiffs

Plaintiffs, Trustees under the Trust Agreement dated November 15, 1968 made by Wiltrud E. Gadboys, as Grantor, purchased an aggregate of $11,000 face amount CONVERTIBLE

DEBENTURES between January 22, 1969 and January 6, 1970, all of said DEBENTURES so purchased being continuously owned by them from and after the date of acquisition up to the present time.

FIFTH: The Defendants

(a) Defendant INDIAN HEAD, INC., a Delaware corporation with principal business offices at 1211 Avenue of the Americas, City and State of New York, is a broadly diversified company in containers, information technology, metal and automotive products, specialty textiles, and utilities and communications products. It operates more than 50 plants employing 17,000 people in the United States, Canada and Overseas.

(b) Defendant TBE (formerly THYSSEN-BORNEMISZA GROUP, N.V.), which acquired more than 90% of the COMMON STOCK, is a foreign, international industrial holding company with headquarters in Amstelveen, the Netherlands, and its activities include large-scale shipbuilding, transportation, distribution of natural gas, building materials production, storage, trans-shipment and transportation of bulk cargoes, chemicals and liquid gases, and the manufacture of agricultrual machinery, tools and sorting and packaging machinery.

(c) Defendant THYSSEN-BORNEMISZA, INC. ("TBI"), a Maryland corporation, is a wholly-owned subsidiary of TBE, formed by TBE for the express purpose of acquiring TBE's INDIAN HEAD stock and warrants; it is the record owner thereof and said INDIAN HEAD stock and warrants constitute TBI's only assets.

(d) Defendant THYSSEN-BORNEMISZA HOLDINGS, INC. ("TBH") is a corporation wholly owned by TBI and organized for the express purpose of having INDIAN HEAD merged into it.

(e) The individual defendants, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALISTER, JOHN E. O'SULLIVAN, RICHARD J. POWERS, JAMES E. ROBISON and ROBERT M. SCHWARZENBACH, were at all times herein mentioned, and now are, directors of INDIAN HEAD. They tendered to TBE for cash, at $27 per share, an aggregate of more than 400,000 shares for which they received more than $13,000,000; and under the proposed merger of INDIAN HEAD into TBI, they will receive $30 a share for their remaining 304,174 shares of COMMON STOCK, or a total of more than $9,000,000.

(f) Defendant ROBISON, Chairman of the Board and a Director of INDIAN HEAD for more than ten years, was Chairman of its Finance Committee, when the understanding with TBE was arranged; he and his family and associates owned more than 270,000 shares of COMMON STOCK, and after the successful completion of the FIRST TENDER OFFER, TBE appointed him to its top policy-making Supervisory Board.

(g) Defendant JAMES G. FERGUSON was at all times herein mentioned Executive Vice President of INDIAN HEAD and tendered to TBE 60,706 shares owned or controlled by him, for $1,639,062 net cash.

(h) Defendant MARINE is the Trustee under the INDENTURE.

THE SECURITIES INVOLVED

SIXTH: Common Stock

(a) Each share of INDIAN HEAD COMMON STOCK is entitled to one vote. Prior to the FIRST TENDER OFFER, there were approximately 5,425,000 shares of COMMON STOCK issued and outstanding, and an additional 649,350 shares reserved for issuance to the DEBENTURE Holders, pursuant to their conversion rights (111,667 shares were also reserved for the conversion rights of preferred stockholders).

(b) The COMMON STOCK of INDIAN HEAD was listed on the New York Stock Exchange continuously to and including September 24, 1974, when it was delisted after first being suspended from trading on or about August 30, 1974.

(c) The high and low sales prices of the COMMON STOCK on the New York Stock Exchange for the periods indicated were as follows:

	COMMON STOCK	
Year	High	Low
1972	30-3/8	22-1/2
1973:		
First Quarter	27-1/2	20-7/8
Second Quarter	23	15-1/4
Third Quarter	25-3/4	16-1/8
Fourth Quarter	27	17
1974:		
First Quarter	22-1/4	17-5/8
Second Quarter	21-7/8	17-3/4
July 1 thru Aug. 1	23-1/4	22

(d) From and after September 24, 1974 (when the COMMON STOCK was delisted) it was traded, but only inactively, on the over-the-counter market as follows:

1974	
September 30	15-3/4
October	18-1/2 -- 15-1/2
November 30	18-3/4
December 27	18-1/2 -- 19

SEVENTH: The Convertible Debenture

(a) Each 5-1/2% CONVERTIBLE SUBORDINATED DEBENTURE due April 15, 1993, is issued in denominations of $1,000; is registered in the name of the owner thereof; is part of an original issue in the aggregate principal amount of $25,000,000, the conversion of all of which would result in the issuance of 649,350 shares of COMMON STOCK, and approximately $14,593,000 principal amount are now outstanding.

(b) Each $1,000 CONVERTIBLE DEBENTURE is convertible at any time, at the option of the holder, into 25.974 shares of COMMON STOCK, and under INDENTURE §5:08:

> "The Company further covenants that, at any time when the Common Stock of the Company is listed on the New York Stock Exchange or any other national securities exchange, the Company will, if permitted by the rules of such exchange, list and keep listed on such exchange, upon official notice of issuance, all shares of Common Stock issuable upon conversion of Debentures." (emphasis supplied)

(c) Each CONVERTIBLE DEBENTURE is redeemable, at INDIAN HEAD's option, according to a redemption schedule which appears on the back of the Debenture. The 1976 rate is 103.30% or $1,030.30.

(d) The INDENTURE requires that notices to each DEBENTURE holder be mailed to him at his last address appearing on the registration books of INDIAN HEAD.

(e) In the event of default, the principal amount of the DEBENTURE, with accrued interest, becomes immediately due and payable. (§8:01(d))

(f) The CONVERTIBLE DEBENTURES were traded on the New York Stock Exchange prior to the FIRST TENDER OFFER and continuously thereafter until about August 30, 1974, when trading was suspended; they were delisted on September 24, 1974; and since have been traded, but only inactively, on the over-the-counter market, as follows:

1974	High	Low
September	48	42
October	50	45
November	54	50
December	57	50

(g) The high and low sales prices of the CONVERTIBLE DEBENTURES on the New York Stock Exchange for the periods indicated were as follows:

	High	Low
1972	96-1/2	80
1973	87-5/8	61-1/2
1974 to June 30	71	61-3/4
1974 July	69-1/2	65-1/2

THE FACTS

A. THE FIRST TENDER OFFER.

EIGHTH: (a) On September 19, 1973, prior to the

first tender offer, INDIAN HEAD and TBE entered into a "Memorandum of Understanding" under which INDIAN HEAD:

(i) agreed to sell TBE 750,000 shares of INDIAN HEAD's authorized but unissued COMMON STOCK, at $27 per share;

(ii) agreed to cooperate with TBE in the FIRST TENDER OFFER; and,

(iii) TBE agreed to buy from the directors up to 50,000 of their shares, and to name ROBISON to the TBE Supervisory Board (which makes TBE policy), if the FIRST TENDER OFFER succeeded.

(b) On September 27, 1973, TBE, in making the FIRST TENDER OFFER to INDIAN HEAD Common Stockholders to purchase a maximum of 1,100,000 shares at $27 per share, revealed to them, in Paragraph 13 of the Statutory Notice sent to each Common stockholder:

> "New York Stock Exchange Listing Status. The Department of Stock List of the New York Stock Exchange has indicated that if the ownership by TBG of Indian Head Common Stock should rise above 32% (or 30%, if 30% or less is purchased pursuant to this Offer and the Agreement referred to above) such additional ownership might ultimately result in the delisting of Indian Head Common Stock from the Exchange. TBG has expressed to Indian Head its commitment that it will consult with Indian Head before taking any action, other than the transactions described in this Offer, which would increase TBG's ownership of Indian Head Common Stock beyond 30% of the outstanding shares. Delisting could also result if the number of persons holding at least 100 shares of Indian Head Common Stock (approximately 4,000 at the present time) should fall below 1,200."(emphasis supplied)

(c) Neither the Statutory Notice, nor any other notice of the FIRST TENDER OFFER or of the possible ultimate Common Stock delisting was sent to the OWNERS.

(d) The FIRST TENDER OFFER terminated on October 10, 1973, with TBE purchasing for cash 1,200,000 (instead of 1,100,000) shares from the Common Stockholders, and 750,000 shares from INDIAN HEAD, giving it approximately 34% of the COMMON STOCK for which it paid, in cash, more than $50,000,000.

(e) The 34% of COMMON STOCK acquired by TBE was 2% to 4% more than the New York Stock Exchange indicated might ultimately result in delisting.

(f) No notice was ever sent the OWNERS that TBE had acquired 2% to 4% more COMMON STOCK than the New York Stock Exchange had indicated might ultimately result in the delisting of the COMMON STOCK into which the DEBENTURES were convertible.

(g) In the FIRST TENDER OFFER, defendant directors sold approximately 67,000 of their shares to TBE for a total of more than $1,809,000 and defendant ROBISON was thereafter named to TBE's top policy-making Supervisory Board.

B. SUBSEQUENT EVENTS.

NINTH: On December 19, 1973 --

> when defendant ROBISON was a member of TBE's top Supervisory Board and TBE's Chairman Huiskamp and director Bachrach were also INDIAN HEAD directors --

TBE made a $50,000,000 credit agreement to help finance its forthcoming July 1974 acquisition of control of INDIAN HEAD.

TENTH: In January 1974 defendant MARINE caused to be sent to the OWNERS, INDIAN HEAD's 1973 Annual Report, which contained only the following reference, on page 3 of the President's Letter to TBE's acquisition of 34% of the COMMON STOCK:

> "THYSSEN-BORNEMISZA GROUP, N.V. During the last quarter of 1973, Indian Head established an important relationship with a major industrial firm in Europe. In October, the Thyssen-Bornemisza Group, N.V. (TBG), a Netherlands-based industrial firm, acquired 1.2 million shares of Indian Head common stock at $27 per share through a tender offer. An additional 750,000 shares of common stock, also at $27 per share, were sold to TBG directly by Indian Head. This new relationship could lead to mutually beneficial business opportunities here and abroad."

ELEVENTH: The Annual Report omitted:

(a) disclosure that the New York Stock Exchange had indicated it might ultimately delist the COMMON STOCK;

(b) disclosure of TBE's financing arrangements for ultimate acquisition of control of INDIAN HEAD; nor was any notice thereof otherwise sent to the OWNERS.

C. THE SECOND TENDER OFFER.

TWELFTH: (a) Prior to July 12, 1974 INDIAN HEAD and its directors agreed to cooperate with TBE to enable TBE to acquire all of the issued and outstanding COMMON STOCK, and unexercised Warrants to buy COMMON STOCK, and certain unexercised employee stock options, and TBE agreed to buy from the defendant directors all COMMON STOCK tendered.

(b) On July 12, 1974, TBE sent statutory notice of the SECOND TENDER OFFER "To the Holders of Common Stock and Warrants to Purchase Common Stock of INDIAN HEAD, INC.," to purchase:

> (1) "all outstanding shares of Common Stock, $1.00 par value (the "Common Stock"), of INDIAN HEAD, INC. (the "Company") from the holders thereof at $27 per share in cash net to the seller"; and
>
> (2) "all the outstanding Warrants to purchase shares of Common Stock of the Company (the "Warrants") from the holders of such Warrants at $2 per Warrant in cash net to the seller..." (emphasis supplied).

to purchase as well as/unexercised Employee Stock Options where the exercise price was less than $27 per share, for the excess of $27 over the exercise price, in cash.

(c) Paragraph 13 of the Statutory Notice of the SECOND TENDER OFFER revealed:

> "Stock Exchange Listing Status. Depending upon the number of shares tendered and purchased pursuant to this Offer, the Common Stock may no longer meet the requirements of the New York Stock Exchange for continued listing and the Exchange may, therefore, delist the shares. Published guidelines of the Exchange indicate that it would consider delisting the Common Stock if the number of publicly held shares was less than 600,000 or if there were fewer than 1200 holders of 100 or more shares (i.e. round lot holders). Moreover, in connection with the purchase by TBG of its present holdings of Common Stock as described in Paragraph 10, the Exchange stated that it would review the continued listing of the Common Stock in the event TBG acquired any additional shares of Common Stock. In such a review, the staff of the Exchange indicated that it would probably commence action to delist the Common Stock even if the guidelines set forth above are met. TBG cannot predict whether any action commenced by the staff of the Exchange to

delist the Company's Common Stock would be successful or what effect delisting would have on the market for the Common Stock. Registration of the Common Stock under the Securities Exchange Act of 1934 may be terminated if the Common Stock is delisted and there are fewer than 300 holders of record of shares of the Common Stock. Such termination would substantially reduce the information required to be furnished by the Company to its stockholders." (emphasis supplied)

(d) TBE committed to pay an aggregate of $105,121,777 for all of said outstanding shares and warrants, plus a maximum additional $910,000 for employee common stock options.

(e) The SECOND TENDER OFFER disclosed to the Common Stockholders and Warrant Holders that INDIAN HEAD directors, including defendant directors, owned and proposed to tender INDIAN HEAD COMMON STOCK, as follows:

	Owned (after Proposed Gifts and Transfers)	To Be Tendered	To Be Retained
James M. Flack	94,524	64,524- 84,524	30,000- 10,000
Andrew Kalman	116,184	80,000-100,000	36,184- 16,184
Paul W. McAlister	71,343	50,000- 60,000	21,343- 11,343
John E. O'Sullivan	33,624	20,000- 30,000	13,624- 3,624
Richard J. Powers	17,325	8,000- 11,000	9,325- 6,325
James E. Robison	263,152	80,000-100,000	183,152-163,152
Robert M. Schwarzenbach	73,724	30,000- 50,000	43,724- 23,724
Marshall F. Smith	4,623	0- 2,300	4,623- 2,323

(f) Pursuant to the SECOND TENDER OFFER, which expired on August 19, 1974, TBE acquired for an aggregate cash price of $99,549,000, 3,687,000 shares which it later transferred to TBI, along with the 1,950,000 previously acquired shares.

(g) Continuously since August 19, 1974, TBE or TBI have owned more than 90% of the approximate 6.1 million shares of COMMON STOCK outstanding, for which TBE paid in cash a total of more than $150,000.00.

(h) Upon consummation of the SECOND TENDER OFFER, INDIAN HEAD officers and directors, as a group, had tendered, in both tender offers, more than 542,000 shares for which they received approximately $14,634,000, of which defendant directors tendered 432,069 shares and defendant FERGUSON had tendered 60,706 shares.

D. THE PROPOSED MERGER.

THIRTEENTH: On February 11, 1976, defendant TBI announced the proposed merger of INDIAN HEAD into TBI, in the Press Release reproduced on the following pages (PROPOSED MERGER). The Wall Street Journal reported the merger the next day, February 12, 1976.

Thyssen-Bornemisza Press Release

Thyssen-Bornemisza Inc.
c/o Indian Head
1211 Avenue of the Americas
New York, New York 10036
Telephone (212) 764-3100

Stuart Pearlman
Director of Communications
Direct Line (212) 764-3195

THYSSEN-BORNEMISZA TO MERGE INDIAN HEAD INTO WHOLLY-OWNED SUBSIDIARY

NEW YORK, Feb. 11 -- Thyssen-Bornemisza Inc. (TBI) announced today that it intends to cause the merger of Indian Head Inc. into a wholly-owned subsidiary of TBI on March 19, 1976 or as soon as practicable thereafter. TBI presently owns approximately 90.6 per cent of the outstanding common stock of Indian Head.

Under the terms of the proposed merger, holders of outstanding Indian Head common stock will receive $30 cash per share.

The plan to merge will have the following effects on other publicly held outstanding Indian Head securities:

-- Indian Head series A preferred stock will be called prior to the merger for redemption at $100 per share plus accrued dividends to the redemption date of March 19 as required by the series A preferred stock provisions.

-- Both issues of outstanding Indian Head subordinated debentures will be assumed by Thyssen-Bornemisza Holdings, Inc., the new subsidiary of TBI. After the merger, the holders of the convertible debentures will no longer have the right to convert to Indian Head common stock but may surrender them and receive an aggregate of $779.22 cash for each $1,000 principal amount of debentures. However, no accrued interest is payable on the convertible debentures if they are surrendered before their March 31, 1976 record date for payment of interest.

-more-

-- There is no requirement that the convertible debentures be surrendered for cash. They may be held until maturity (1993) and earn the regular interest payments.

-- Under the Warrant Agreement, any holder of a warrant who might choose to exercise his warrant after the merger would receive $30 in cash -- that is, an amount equal to the required $30 exercise price. The $30 is the permanently fixed cash value of an exercised warrant after the merger because the Warrant Agreement provides that a holder will be entitled to purchase only the kind and number of shares of stock or other securities or property to which he would have been entitled if he had held the Indian Head common stock issuable upon exercise of the warrant immediately prior to the merger.

Indian Head securities are traded over-the-counter through the National Association of Securities Dealers, except for the warrants which are traded on the American Stock Exchange.

Thyssen-Bornemisza Inc. is a U.S. subsidiary of Thyssen-Bornemisza N.V., a privately owned industrial holding company.

# # #

FOURTEENTH: Solicitations and Communications to the OWNERS, STOCKHOLDERS and WARRANT HOLDERS are now being prepared by TBI to be sent to them, unless restrained by the Court.

FIRST CLAIM

FIFTEENTH: This Claim arises under Section 10(b) of the '34 Act (15 USC 78(j)) and Rule 10b-5 of the Rules and Regulations thereunder.

SIXTEENTH: When plaintiffs and the CLASS bought their CONVERTIBLE DEBENTURES, both the DEBENTURES and the COMMON STOCK were listed on the New York Stock Exchange.

SEVENTEENTH: INDIAN HEAD committed itself in the INDENTURE to "list and keep listed all shares of common stock issuable upon conversion of debentures" (§ 5:08). (emphasis supplied)

EIGHTEENTH: When INDIAN HEAD caused the DEBENTURES to be listed on the New York Stock Exchange, it assumed the implied obligation to cause said listing to be maintained in the same manner as provided in the INDENTURE with respect to the COMMON STOCK.

NINETEENTH: When the FIRST TENDER OFFER was made, TBE and the defendants, including MARINE: [a] knew that the New York Stock Exchange had indicated that the COMMON STOCK would be delisted if TBE acquired more than 32%, which it did; and [b] knew or should have known that the DEBENTURES might also be delisted.

TWENTIETH: When the SECOND TENDER OFFER was made, and assuming its completion, TBE and the defendants, including MARINE: [a] knew that the COMMON STOCK would be delisted; and, [b] knew or should have known that the DEBENTURES would be delisted.

TWENTY-FIRST: The defendants knew that the delisting of the COMMON STOCK and the DEBENTURES would have a material adverse effect on the marketability of the DEBENTURES and on the value of the conversion right, and would materially and substantially alter the nature of the OWNERS' investment.

TWENTY-SECOND: Commencing on or about September 27, 1973 and continuously thereafter, TBE and the defendants, including MARINE, concealed and withheld from the OWNERS the fact that the tender offers could lead to delisting and that the DEBENTURES and the COMMON STOCK could be delisted.

TWENTY-THIRD: Each act, and each fact of making each tender offer, the consummation of each tender offer and the concealment thereof, each resulted in the continuous failure of INDIAN HEAD to duly observe and perform its covenant and agreement in the INDENTURE to list and keep the COMMON STOCK listed, and its implied obligation to list and keep the DEBENTURES listed, and each thereby created a separate event of default under the INDENTURE, each of which continues to the present time without having been remedied; and the defendants aided and abetted said acts and omissions.

TWENTY-FOURTH: Under the INDENTURE each such act of default resulted in the acceleration of the payment of principal and accrued interest on the DEBENTURES which such payment with accrued interest thereupon, became due and payable, no part of which has been paid.

TWENTY-FIFTH: The acts of the defendants herein described involve devices, schemes and artifices to defraud the OWNERS, as well as omissions to state material facts necessary in order to make the statements made, in the light of the circumstances in which they were made not misleading, as well as acts, practices and an entire course of business which operated as a fraud and a deceit upon the OWNERS, in connection with the purchase or sale of the security, in violation of §10(b) and Rule 10b-5.

TWENTY-SIXTH: By reason of the foregoing, every OWNER on September 27,1973 or thereafter, is entitled to exercise his rights of default under the INDENTURE and to have the principal of each DEBENTURE with accrued interest paid immediately.

SECOND CLAIM

TWENTY-SEVENTH: This Claim arises under §10(b) of the '34 Act (15 USC 78(j)) and Rule 10b-5 of the Rules and Regulations thereunder.

TWENTY-EIGHTH: In the approximately eighteen months since TBE acquired more than 90% control of INDIAN HEAD, the OWNERS have in fact: (a) been unable to freely dispose of their DEBENTURES in the manner represented to them, and which they had a right to expect, when they purchased the DEBENTURES, and (b) have been deprived of the economic benefit of participating in the growth of INDIAN HEAD through the exercise of the conversion right which was rendered economically meaningless by the acts of the defendants.

TWENTY-NINTH: As a result of the foregoing, the OWNERS have been, since August 20, 1974, the economic captives of TBE and INDIAN HEAD, aided and abetted by the defendants.

THIRTIETH: The merger deliberately and wilfully ignores Section 401 of the INDENTURE which provides a fair and accepted method for voluntary redemption by INDIAN HEAD:

> "The Company may at any time at its option redeem all, or from time to time any part of, the Debentures * * * together with interest accrued to the date fixed for redemption, and upon the terms applicable thereto specified in the form of Debenture * * *"

THIRTY-FIRST: The DEBENTURE Certificate issued to each OWNER provides on the reverse side that the redemption price for 1976 is 103.30% or $1,030.30.

THIRTY-SECOND: Having failed to remedy the defaults under the INDENTURE, TBI's proposed merger is a deliberate and

wilful attempt to further circumvent the said provisions of the INDENTURE and DEBENTURE by forcing the OWNERS to sell at an arbitrary price, in defiance of the redemption price specified in the DEBENTURES, aided and abetted by the defendants.

THIRTY-THIRD: The purported alternative offer to the OWNERS, to have TBH assume their DEBENTURES, but without the conversion right provided for in the INDENTURE is a breach of §13:01 of the INDENTURE:

> "The Company will not consolidate with, merge into or sell or otherwise dispose of all or substantially all the property of the Company as entirety to, any person unless * * * such successor corporation (other than the Company) shall expressly assume by indenture supplemental hereto satisfactory in form to the Trustee, executed and delivered to the Trustee by the corporation *** into which the Company shall have been merged * * * the due and punctual payment of the principal of and interest (and premium if any) on the Debentures according to their tenor, and the due and punctual performance and observance of all the terms, covenants and conditions of this Indenture and the Debentures to be performed or observed by the Company."
>
> [Emphasis supplied.]

THIRTY-FOURTH: The merger offer to pay far less than the reduced price, or keep the DEBENTURES without conversion, is a Hobson's Choice under which the OWNERS would be forced either to give up their redemption right to $1,030.30, or to surrender forever the conversion right which INDIAN HEAD guaranteed, not only for itself, but for any successor.

THIRTY-FIFTH: The merger provision under which the DEBENTURES would be assumed by TBH, but without a conversion

privilege, constitutes the occurrence of another event of default under Articles Fifth and Eighth of the INDENTURE.

THIRTY-SIXTH: As a result of the proposed merger, INDIAN HEAD will in fact be acquired by TBE, a foreign corporation, through TBE's wholly owned subsidiary TBI which in turn is the sole owner of TBH.

THIRTY-SEVENTH: The merger which results in the ownership of INDIAN HEAD by a foreign corporation, TBE, constitutes the occurrence of another event of default under the INDENTURE which provides in §13:01 that INDIAN HEAD:

> "will not consolidate with, merge into or sell or otherwise dispose of all or substantially all of the property of the Company as an entirety to any person unless (a) the successor formed by or resulting from such consolidation or merger * * * shall be a corporation organized under the laws of the United States of America or any state, district or territory thereof."

THIRTY-EIGHTH: TBI's Press Release constitutes a manipulative and deceptive device under §10(b) and Rule 10b-5 in connection with the purchase and sale of a security in that it omits to state the material facts hereinbefore alleged, which are necessary in order to make that Release, in the light of the circumstances under which it was made, not misleading.

THIRTY-NINTH: By virtue of the foregoing, defendants have employed devices, schemes and artifices to defraud and engaged in acts and practices in the course of business which

have operated and will operate as a fraud and deceit upon plaintiffs and the CLASS, in connection with the purchase and sale of securities, all in violation of §10(b) of the '34 Act and Rule 10b-5 thereunder.

FORTIETH: The merger must be enjoined and TBI ordered to redeem each DEBENTURE for the redemption price of $1,030.30.

THIRD CLAIM

FORTY-FIRST: This Third Claim arises under §10(b) of the '34 Act (15 USC 78(j)) and Rule 10b-5 of the Rules and Regulations thereunder.

FORTY-SECOND: By not giving the OWNERS notice of the tender offers and of the prospective delisting of the COMMON STOCK and DEBENTURES, defendants aided and abetted TBE:

(a) To avoid paying approximately $17,500,000 it would have cost had all the DEBENTURES tendered at the $27 a share tender price;

(b) To depress the price and value of the DEBENTURES;

(c) To hold the OWNERS economic captives, forcing retirement of the DEBENTURES, at its will, at less than face or redemption value;

(d) To use the assets and credit of INDIAN HEAD to retire the DEBENTURES in a forced sale at a dictated price;

(e) To impose upon the OWNERS a price solely determined by TBE for its own benefit and payable, directly or indirectly, by or through INDIAN HEAD.

(f) To merge INDIAN HEAD without assuming the conversion right required by the INDENTURE.

FORTY-THIRD: The tenders, the delisting of the COMMON STOCK and the DEBENTURES, the accumulation of more than 90% of the COMMON STOCK by one owner, TBE, each alone and together comprise manipulative devices depressing the market price and value of the DEBENTURES, resulting in an economic effect tantamount to destruction of the DEBENTURE and of the conversion privilege, thereby breaching the INDENTURE provisions relating to stock listing, coversion and merger and causing respective EVENTS OF DEFAULT.

FORTY-FOURTH: By virtue of the foregoing: INDIAN HEAD has been in default under the INDENTURE, in breach thereof and of the rights of the OWNERS, since September 27, 1973; and, the principal with accrued interest of each outstanding DEBENTURE has been due and payable since September 27, 1973.

FOURTH CLAIM

FORTY-FIFTH: This claim arises under §10(b) and Rule 10b-5 of the '34 Act.

FORTH-SIXTH: INDIAN HEAD has been in default under the INDENTURE continuously since September 27, 1973, as hereinabove alleged.

FORTY-SEVENTH: §13:01 of the INDENTURE prohibits a merger if INDIAN HEAD is in default, as follows:

> "The Company will not so consolidate or merge, or make any such sale or other disposition, or permit any corporation to merge into the Company, unless immediately after such consolidation, merger, sale or other disposition, the Company or such successor corporation, as the case may be, shall not be in default in the performance of any of the covenants, agreements or conditions contained in this Indenture or in the Debentures."
>
> [Emphasis supplied.]

FORTY-EIGHTH: By virtue of the foregoing, the merger constitutes a scheme and device to defraud which will operate as a fraud and deceit upon plaintiffs and the CLASS, in connection with the purchase and sale of securities, in violation of §10(b) of the '34 Act and Rule 10b-5 thereof.

FORTY-NINTH: The merger must be enjoined and each OWNER paid the full amount of principal on each DEBENTURE with accrued interest.

FIFTH CLAIM

FIFTIETH: This Claim arises under §10(b) of the '34 Act and Rule 10b-5 thereunder and is asserted on behalf of the CLASS, the STOCKHOLDERS CLASS and the WARRANT CLASS.

FIFTY-FIRST: The merger is a manipulative and deceptive device in breach of the Federal Securities laws, designed to freeze out the members of the CLASS, the STOCKHOLDERS CLASS and the WARRANT CLASS at grossly unfair prices, ultimately payable, directly or indirectly, through the use of INDIAN HEAD assets or credit.

FIFTY-SECOND: The merger has no business purpose and is designed to and has the effect of permitting TBE, through TBI and TBH, to acquire INDIAN HEAD at discount prices, in derogation of the rights and interests of the CLASS, the STOCKHOLDERS CLASS and the WARRANT CLASS, aided and abetted by defendants.

FIFTY-THIRD: Under the merger the members of the CLASS, the STOCKHOLDERS CLASS and the WARRANT CLASS will be frozen out and forced to sell at terms arbitrarily dictated by TBE, TBI and TBH, aided and abetted by the defendants (other than MARINE).

FIFTY-FOURTH: The merger terms are unfair as to each member of each class, being designed only to further the private interests and concerns of the defendants, other than MARINE, without regard to the rights of the members of each class.

FIFTY-FIFTH: The corporate defendants (other than MARINE) who control INDIAN HEAD and the individual defendants who comprise INDIAN HEAD's management and the Board of Directors, owe a fiduciary duty to members of each class, which they breached by the making of the merger proposal and will breach unless the merger is enjoined.

FIFTY-SIXTH: By reason of the foregoing, the defendants and each of them,other than MARINE, have engaged in schemes and devices to defraud in violation of §10(b) and Rule 10b-5 thereunder.

FIFTY-SEVENTH: By reason of the foregoing, the merger

must be enjoined and the defendants directed to pay the OWNERS the redemption price to which they are entitled and the members of the STOCKHOLDERS CLASS and the WARRANT CLASS, the fair value of the COMMON STOCK represented thereby.

FIFTY-EIGHTH: By reason of the foregoing, plaintiffs and each member of the CLASS, the STOCKHOLDERS CLASS and the WARRANT CLASS are also entitled to such damages as may be determined.

SIXTH CLAIM

FIFTY-NINTH: This Claim arises under Section 10(b) of the '34 Act and Rule 10-b thereunder.

SIXTIETH: Defendant MARINE at all times knew of the prospective delisting of the COMMON STOCK and knew or should have known that the DEBENTURES might be delisted, and therefore breached its obligations under the INDENTURE and its fiduciary duty to the OWNERS of the CONVERTIBLE DEBENTURES in failing, on or after September 27, 1973 to declare such EVENT OF DEFAULT, and to accelerate payment of principal and accrued interest, as hereinbefore alleged and by its failure to do so, aided and abetted the defendants' wrongful act.

SEVENTH CLAIM

SIXTY-FIRST: This Claim arises under Sections 14(d), 14(e) and 10(b) of the '34 Act and Rule 10b-5 of the Rules and Regulations thereunder.

SIXTY-SECOND: On or about September 27, 1973, MARINE knew or should have known that the New York Stock Exchange had indicated that the COMMON STOCK might ultimately be delisted, and that the DEBENTURES might also be ultimately delisted.

SIXTY-THIRD: As the OWNERS' fiduciary, MARINE should have promptly notified the OWNERS of the possible delisting of the COMMON STOCK and DEBENTURES.

SIXTY-FOURTH: On or about July 12, 1974, MARINE knoew or should have known that the COMMON STOCK and DEBENTURES would be delisted and should have promptly sent notice to

OWNERS that upon completion of the SECOND TENDER OFFER, the COMMON STOCK and DEBENTURES would be delisted.

SIXTY-FIFTH: Between September 27, 1973 and August 19, 1974, MARINE sent various communications and reports to the OWNERS but failed to include therein or therewith notice of the prospective delisting of the COMMON STOCK and DEBENTURES as herein named.

SIXTY-SIXTH: By reason of the foregoing, MARINE breached the INDENTURE and its fiduciary obligations to the OWNERS, and aided and abetted the defendants in their wrongful conduct.

EIGHTH CLAIM

SIXTY-SEVENTH: This Claim arises under Section 10(b) of the '34 Act and Rule 10b-5 thereunder.

SIXTY-EIGHTH: The 1973 Annual Report sent to the OWNERS was materially misleading and deceptive in that it omitted to disclose the FIRST TENDER OFFER and the material information contained therein, including the Memorandum of Understanding between INDIAN HEAD Management and TBE.

NINTH CLAIM

SIXTY-NINTH: This Ninth Claim arises under Sections 14(d) and 14(e) of the '34 Act ("WILLIAMS ACT") and 10(b) of the '34 Act and Rule 10b-5 of the Rules and Regulations thereunder.

SEVENTIETH: The conversion privilege of the CONVERTIBLE DEBENTURES afforded plaintiffs and the CLASS an option to purchase the COMMON STOCK, so that they were members of the Common Stockholder Class within the meaning, purpose and intent of the WILLIAMS ACT.

SEVENTY-FIRST: The defendants, in failing to send or cause to be sent to plaintiffs and the CLASS notice of each tender offer, violated Section 14(d)(1) and (6) of the '34 Act, as well as the INDENTURE, as aforesaid.

SEVENTY-SECOND: The failure of the defendants to send or cause to be sent notice to plaintiffs and the CLASS, of the FIRST and SECOND TENDER OFFERS, represented:

(a) Fraudulent, deceptive and manipulative acts and practices in connection with the tender offers and manipulative and deceptive devices and contrivances in connection with the purchase and sale of a security; and

(b) A device, scheme and artifice to defraud and an act, practice or course of business which operated as a fraud and deceit upon plaintiffs and the CLASS in connection with the purchase or sale of a security in violation of Section 10(b) of the Act and Rule 10b-5 of the Rules and Regulations thereunder.

SEVENTY-THIRD: As a result of said violations:

(a) The INDENTURE was breached, and EVENTS OF DEFAULT created which were never remedied;

(b) The nature of the CONVERTIBLE DEBENTURES was drastically and adversely altered; and

(c) The value of the CONVERTIBLE DEBENTURES and of the COMMON STOCK into which they are convertible was drastically reduced; and

(d) The marketability of the CONVERTIBLE DEBENTURES and the COMMON STOCK was materially adversely affected; and

(e) TBE was enabled to constructively consolidate in breach of the merger and conversion provisions of the INDENTURE.

SEVENTY-FOURTH: By reason of the foregoing, each OWNER on or after September 27, 1973 is entitled to exercise his right of default under the INDENTURE and to be paid the principal amount of the DEBENTURES, with accrued interest less the net amount actually received from the sale of any DEBENTURES.

TENTH CLAIM

SEVENTY-FIFTH: This Tenth Claim arises under Sections 14(d), 14(e) and 10(b) of the Act, and Rule 10b-5 of the Rules and Regulations thereunder.

SEVENTY-SIXTH: Neither INDIAN HEAD nor TBE sent or caused to be sent any notice of either the FIRST or the SECOND OFFERS to plaintiffs and the CLASS.

SEVENTY-SEVENTH: Between September 27, 1973 and August 19, 1974, INDIAN HEAD and TBE, aided and abetted by the other defendants, failed to send or cause to be sent any notice to plaintiffs or the CLASS about the material matters contained in the statutory tender offer notices, including that:

(a) In October, 1973, TBE had acquired approximately 34% of the COMMON STOCK from the Common Stockholders and INDIAN HEAD for approximately $50,000,000 in cash, and the COMMON STOCK and DEBENTURES must be delisted.

(b) Upon the completion of the SECOND TENDER OFFER, the COMMON STOCK and the CONVERTIBLE DEBENTURES would be delisted from the New York Stock Exchange.

(c) Each tender offer and the proposed acquisition of more than 80% of the COMMON STOCK (and the actual acquisition of more than 90% of the COMMON STOCK) resulted in EVENTS OF DEFAULT under the INDENTURE, as aforesaid.

(d) INDIAN HEAD would be merged out of existence, the OWNERS deprived of their conversion rights and forced to sell their DEBENTURES at TBE's bidding.

SEVENTY-EIGHTH: By virtue of the foregoing, defendants:

(a) engaged in fraudulent, deceptive and manipulative acts and practices in connection with both tender offers, in violation of the Williams Act, (Section 14(e)).

(b) employed devices, schemes and artifices to defraud and engaged in acts and practices in the course of business which operated as a fraud and deceit upon plaintiffs and the members of the CLASS, in connection with the purchase and sale of securities, all in violation of Section 10(b) of the Act and Rule 10b-5 therein.

SEVENTH-NINTH: By reason of the foregoing, each OWNER on or after September 27, 1973 is entitled to exercise his right of default under the INDENTURE and to be paid the

principal amount of each DEBENTURE, with accrued interest, less the net amount actually received from the sale of his DEBENTURES plus interest.

ELEVENTH CLAIM

EIGHTIETH: This Claim is brought by plaintiffs under the common law of which this Court has pendent jurisdiction.

EIGHTY-FIRST: The individual defendant directors of INDIAN HEAD and INDIAN HEAD Executive Vice President FERGUSON, owed and owe a fiduciary duty to plaintiffs and the CLASS, as have TBE, TBI and TBH since TBE's acquisition of 34% control of INDIAN HEAD.

EIGHTY-SECOND: In or about September 1973, defendants entered into a conspiracy pursuant to which defendant Robinson and INDIAN HEAD and its other directors, including the other defendant directors, agreed to aid and abet TBE in acquiring more than 80% control of INDIAN HEAD,and thereafter merging INDIAN HEAD into TBI and freezing out the OWNERS and all minority SECURITY HOLDERS,in exchange for the agreement of TBE to purchase for cash at $27 per share. shares of COMMON STOCK owned by the directors and officers, and further, for the agreement of TBE to name defendant Robinson to TBE's top policy-making Supervisory Board and to retain the management and directors of INDIAN HEAD in such capacities indefinitely.

EIGHTY-THIRD: INDIAN HEAD and the directors, including the defendant directors and defendant FERGUSON, agreed to aid and abet TBE in acquiring control of INDIAN HEAD itself so that TBE would avoid to the largest possible extent having to purchase any of the COMMON STOCK underlying the CONVERTIBLE

DEBENTURES, or INDIAN HEAD's CONVERTIBLE PREFERRED STOCK SERIES A which is convertible into 3.15 shares and for which 111,667 shares are reserved for conversion.

EIGHTY-FOURTH: TBE, TBH and TBI embarked upon a scheme, aided and abetted by the individual defendants, to depress the value of the CONVERTIBLE DEBENTURES and the CONVERSION PRIVILEGE and enable TBE, TBH and TBI to ultimately use, directly or indirectly, the assets and credit of INDIAN HEAD to freeze out and force the retirement of the CONVERTIBLE DEBENTURES before their due date at a time and at a price far below the redemption price fixed in the DEBENTURE, determined entirely by TBE and for its sole benefit.

EIGHTY-FIFTH: Pursuant to said conspiracy, defendants, singly and in concert, breached and caused to be breached, the notice provisions of both the INDENTURE, and of the Williams Act, and the purpose and intent of both, by failing and refusing to send to plaintiffs and the CLASS notice of TBE's proposed and actual takeover of INDIAN HEAD.

EIGHTY-SIXTH: In furtherance of said conspiracy, the defendant directors benefited themselves by selling some of their COMMON STOCK to TBE at $27 per share while retaining more than 300,000 shares to be sold in the merger at $30 per share, $3 per share more than the public stockholders and warrant holders are to receive; defendant FERGUSON benefited himself to the extent of $1,627,695; and none of them made any effort to enable plaintiffs and the CLASS to enjoy similar benefits and denied to plaintiffs and the CLASS such benefits; and defendant ROBISON secured his appointment to the TBE Supervisory Board, which he obtained by virtue of his control and use of INDIAN HEAD.

EIGHTY-SEVENTH: By reason of the foregoing, TBE was enabled: [a] to substantially reduce the amount of cash or credit it required for obtaining control of INDIAN HEAD; and [b] on the merger of INDIAN HEAD, to seek to redeem the CONVERTIBLE DEBENTURES prior to their due date, at a price far below the redemption price fixed in the CONVERTIBLE DEBENTURE Certificate.

EIGHTY-EIGHTH: As a result of the foregoing:

(a) INDIAN HEAD and its directors, including the defendant directors, aided and abetted by the corporate defendants, other than MARINE, breached the INDENTURE and the Debenture Contract, and the fiduciary obligations they owed to plaitniffs and the CLASS;

(b) From and after its acquisition of approximately 34% of the COMMON STOCK, TBE, TBH and TBI violated the fiduciary obligations they owed as control stockholders of INDIAN HEAD, to plaintiffs and the CLASS;

(c) From and after TBE's acquisition of more than 90% of the COMMON STOCK, TBE, aided and abetted by TBI, has violated and continues to violate the fiduciary obligations it owes to plaintiffs and the CLASS; has caused and permitted INDIAN HEAD to be in default under the INDENTURE; and is taking advantage of its control and the captive position of the CONVERTIBLE DEBENTURES by attempting to circumvent the redemption provisions of the CONVERTIBLE DEBENTURE Certificate.

(d) TBI, as wholly owned subsidiary and assignee of TBE, and TBH, as TBI's wholly owned subsidiary, stand in the shoes of TBE and have violated and violate the fiduciary obligations owed to plaintiffs and the CLASS, all to the irreparable injury and damage of plaintiffs and the CLASS.

EIGHTY-NINTH: By reason of the foregoing, each OWNER on or after September 27, 1973, is entitled to payment of principal on his DEBENTURE, less the net amount actually received from the sale of DEBENTURES.

NINETIETH: By reason of the foregoing, plaintiffs and the CLASS are entitled to such other and additional and punitive damages as may be determined.

WHEREFORE, plaintiffs demand judgment against defendants as follows:

1. Requiring INDIAN HEAD, TBE, TBH and TBI to pay to each person who on or after September 27, 1973 was a registered owner or beneficial owner of INDIAN HEAD CONVERTIBLE DEBENTURES, and each who succeeded to their rights, and who sold on or before February 10, 1976, the principal with accrued interest of each CONVERTIBLE DEBENTURE, less the net proceeds of any such sale.

2. Requiring INDIAN HEAD, TBE, TBH and TBI to redeem and pay to each person who is, on or after February 11, 1976, a registered or beneficial owner of CONVERTIBLE DEBENTURES and each who succeeded to their rights, the $1,030.30 redemption price provided in the INDENTURE for the CONVERTIBLE DEBENTURES, plus interest.

3. Requiring INDIAN HEAD, TBE, TBH and TBI to pay to each person who is, on or after February 11, 1976, a beneficial owner of INDIAN HEAD COMMON STOCK and/or of INDIAN HEAD WARRANTS to purchase common stock, the fair value of their respective shares and/or warrants, plus interest.

4. That on the FIFTH CLAIM, plaintiffs and the CLASS, and each member of the STOCKHOLDERS CLASS and WARRANT CLASS be awarded such damages as may be just and proper.

5. That plaintiffs and the CLASS be awarded punitive damages as to this Court may be just and proper.

6. Pending such payment, defendants, their officers, agents, servants, employees, attorneys and those persons acting in concert or in participation with them, or each of them, be temporarily and permanently enjoined from: [a] causing or permitting INDIAN HEAD or its business or assets to be directly or indirectly merged, consolidated with or otherwise acquired, directly or indirectly, by TBE, TBI or any company or entity owned or controlled by them, or any of them, or otherwise, or [b] directly or indirectly making or permitting TBI, TBH, INDIAN HEAD or any successor or assign of them or any of them to make any offer, solicitation or other communication of any kind, oral or written, whether by proxy solicitation, prospectus, notice, Press Release, advertisement, radio, television or other announcement to the registered owners of INDIAN HEAD DEBENTURES, or to INDIAN HEAD COMMON STOCK or INDIAN HEAD WARRANT HOLDERS, relating, directly or indirectly, to the merger, consolidation, or sale of INDIAN HEAD, or to any tender, redemption, purchase of INDIAN HEAD DEBENTURES, Common Stock or Warrants, or other offer of any kind.

7. That the Court award reasonable counsel fees to the attorneys and counsel for plaintiffs, and reasonable expert fees for plaintiffs, and that no payments be made to DEBENTURE OWNERS, STOCKHOLDERS, or WARRANT HOLDERS until such award has been made and payment thereof arranged.

8. That each member of the CLASS, STOCKHOLDER CLASS and WARRANT CLASS be awarded interest on any payments made to them.

9. That plaintiffs be awarded costs and disbursements incident to the prosecution of its action, together with all sums awarded, with interest from September 27, 1973.

10. That plaintiffs receive such other and further relief that may be proper and equitable in the premises.

Dated: New York, New York
February 19, 1976.

Austrian, Lance & Stewart, P.C.
Attorneys for Plaintiffs
630 Fifth Avenue
New York, New York 10020
Tel. No. (212) 489-9500

By: William Klein, II

WILLIAM KLEIN II,
A Member of the Firm

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

DANIEL R. KAPLAN, as a Trustee under the Trust Agreement dated November 15, 1968 made by WILTRUD E. GADBOYS, as Grantor, being duly sworn, deposes and says that he resides at 845 Claflin Avenue, Mamaroneck, New York 10543, and is one of the Plaintiffs named in the within action; that he has read the foregoing Amended Complaint and knows the contents thereof; that the same is true to his own knowledge, except as to the matters contained therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

Daniel R. Kaplan

DANIEL R. KAPLAN

Sworn to before me, this
19th day of February, 1976

Judith S. Zuckerman

JUDITH S. ZUCKERMAN
Notary Public, State of New York
No. 41-4398515 - Queens County
Certificate filed in New York County
Term Expires March 30, 1977

STATE OF NEW YORK, COUNTY OF NEW YORK) ss.:

Luba Cosgrove, being duly sworn, deposes and says:

Deponent is not a party to the action and resides at 77 Seventh Avenue, New York, N.Y. On February 20, 1976, deponent served the within Amended Verified Complaint upon the following named attorneys:

Shearman & Sterling, Esqs.
Attorneys for Defendants Thyssen-Bornemisza Europe N.V. and Thyssen-Bornemisza Inc.
53 Wall Street
New York, New York 10005

Cravath, Swaine & Moore, Esqs.
Attorneys for the Individual Defendants
One Chase Manhattan Plaza
New York, New York 10005

Richard J. Cutler, Esq.
Attorney for Defendant, Indian Head, Inc.
1211 Avenue of the Americas
New York, New York 10036

Sullivan & Cromwell, Esqs.
Attorneys for Marine Midland Grace Trust Company of New York
48 Wall Street
New York, New York 10005

by depositing a true copy of same enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Luba Cosgrove

Sworn to before me this
20th day of February, 1976

ELLEN JACKSON
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-1936750
Qualified in New York County
Term Expires March 30, 19[illegible]

SECOND AMENDED COMPLAINT (Filed July 20, 1976)
(pp. 84a-147a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD BRUCKER and DANIEL R. KAPLAN, as Trustees under the Trust Agreement dated November 15, 1968 made by WILTRUD E. GADBOYS, as Grantor, CECIL G. HUSKEY, W. T. STRATTON and NORTE & CO., a partnership composed of JOSEPH C. GALDI and RITA D. GALDI,	Civil Action File No. 74 Civ. 5755 (CES Jr.)
Plaintiffs,	
-against-	SECOND AMENDED COMPLAINT
THYSSEN-BORNEMISZA EUROPE N.V., THYSSEN-BORNEMISZA, INC., THYSSEN-BORNEMISZA HOLDINGS, INC., MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK, INDIAN HEAD, INC., JAMES G. FERGUSON, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALLISTER, JOHN E. O'SULLIVAN, RICHARD J. POWERS, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, HERBERT E. BACHRACH, GERARD B. HUISKAMP, WHITE, WELD & CO. INCORPORATED, L. EMERY KATZENBACH, H. H. THYSSEN-BORNEMISZA, R. L. GENILLARD and CHEMICAL BANK OF NEW YORK,	CLASS ACTION
Defendants.	

Plaintiffs EDWARD BRUCKER, DANIEL R. KAPLAN, CECIL G. HUSKEY, W.T. STRATTON and NORTE & CO., a partnership composed of JOSEPH C. GALDI and RITA D. GALDI ("NORTE"), on behalf of all classes as herein defined, by their attorneys, AUSTRIAN, LANCE & STEWART, P.C., complaining of the defendants, allege on information and belief (except as to Paragraph FOURTH, which they allege on knowledge):

JURISDICTION

FIRST: The jurisdiction of this Court over the claims set forth hereinbelow is invoked pursuant to

§ 27 of the Securities Exchange Act of 1934, as amended ("'34 ACT"), (15 USC § 78aa), §22 of the Securities Act of 1933, as amended, ("'33 ACT"), (15 USC § 77v) and further under the principles of common law respecting which this Court may exercise pendent jurisdiction, all as more particularly set forth hereinbelow.

CLASS ACTION ALLEGATIONS

SECOND: Each claim herein is brought by each plaintiff individually on his own behalf and representatively on behalf of all members of each of the classes as hereinafter defined.

THIRD: The Classes herein are:

1. Common Stock Class. All owners, beneficially or of record, of $1.00 par value common stock of Indian Head Inc. ("INDIAN HEAD");

2. (a) Debenture Class. All owners, beneficially or of record, of 5-1/2% Convertible Subordinated Debentures due April 15, 1993 of INDIAN HEAD ("DEBENTURES");

(b) Debenture Class A. All former owners, beneficially or of record, of DEBENTURES who sold such DEBENTURES on or after September 27, 1973;

3. (a) Warrant Class. All owners, beneficially or of record, of warrants ("WARRANTS") issued pursuant to the Warrant Agreement dated as of May 15, 1965 between Indian Head and Chemical Bank ("CHEMICAL"); and

(b) Warrant Class A. All former owners, beneficially or of record, of WARRANTS who sold such WARRANTS on or after August 1, 1973.

FOURTH: This action is properly maintainable as a class action on behalf of each Class in accordance with the requirements of Rule 23(a) of the FEDERAL RULES OF CIVIL PROCEDURE and of Rule 11A of the CIVIL RULES OF this Court in that:

A. Each Class is so numerous as to make joinder of each of its members impracticable. There are more than 1000 DEBENTURE and COMMON STOCK owners and more than 750 WARRANT owners, all widely scattered throughout the United States and foreign countries. Their holdings vary in amount from a few to many shares or WARRANTS, with the majority in number being holders of small amounts, and in the case of the DEBENTURES, from $1,000 to many thousands of dollars each.

B. Common Questions:

Common questions of law and fact predominate over any question that may affect only individual class members, these common questions including:

1. All Classes

(a) Whether the proposed merger announced on February 11, 1976 of INDIAN HEAD into a subsidiary of defendant THYSSEN-BORNEMISZA, INC. ("TBI"), a wholly owned subsidiary of/defendant the parent of

THYSSEN-BORNEMISZA EUROPE N.V. ("TBE"), ("MERGER PLAN") and its withdrawal, were and are manipulative and deceptive devices in breach of the Federal Securities Law, which chilled and conditioned the market for all INDIAN HEAD securities, and destroyed its viability; were and are designed to freeze out the members of all Classes at unfair prices, violate the express contract rights of the DEBENTURE and WARRANT Classes to listed securities, and the implied rights of the COMMON STOCK Class; and involved breaches of the fiduciary duties owed to all Classes by each defendant, other than CHEMICAL and MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK ("MARINE"), Trustee under the Indenture dated April 15, 1968 between INDIAN HEAD and MARINE ("INDENTURE") under which the DEBENTURES were issued.

(b) Whether the defendants have used or permitted the use of 100% of INDIAN HEAD's business and assets, even though TBI owns only 90.6%, for their own benefit, in derogation of the interests of all Classes, thereby violating and unfairly diminishing those interests and the right of all Classes to enjoy them fully, without let or hindrance.

(c) Whether each member of each Class is entitled to dissolution or liquidation of INDIAN HEAD to the extent of the payment to him in cash of an amount equal to his distribution

or aliquot interest therein and to the value of his right to participate in INDIAN HEAD's growth and prospects.

2. Debentures

(a) Whether the tenders for an acquisition in 1973 and 1974 by defendant TBE of a total of 90.6% of INDIAN HEAD's issued and outstanding COMMON STOCK ("FIRST TENDER OFFER"), and the failure of defendants other than CHEMICAL and WHITE, WELD, to send the DEBENTURE Class members notice of the delisting of the DEBENTURES and COMMON STOCK from the New York Stock Exchange, constituted violations of the INDENTURE and of the Listing Agreements with, and the Rules and Regulations of, the New York Stock Exchange, creating events of default under the INDENTURE, so that the principal and accrued interest of all outstanding DEBENTURES became due and payable immediately.

(b) Whether the MERGER PLAN and its withdrawal violated the INDENTURE and the rights of the DEBENTURE Classes, creating an event of default thereunder so that the principal and accrued interest of all outstanding DEBENTURES became due and payable immediately.

(c) Whether the conduct of the defendants was a breach of their fiduciary obligations to the DEBENTURE Classes.

3. Common Stock and Warrant Classes

(a) Whether the First Tender Offer omitted to state material facts necessary in order to make the statements made not misleading, including the fact that the offer was part of a scheme to transfer control of INDIAN HEAD to TBE and to impair or destroy the value of the WARRANTS and the rights of the holders of COMMON STOCK and WARRANTS.

(b) Whether the First and Second Tender Offers omitted to state material facts necessary in order to make the statements made not misleading, including the fact that the prices for the COMMON STOCK and WARRANTS were fixed arbitrarily by TBE without reference to their fair value and that TBE intended to impair or destroy the value of the WARRANTS and COMMON STOCK.

(c) Whether TBE's intended use of INDIAN HEAD's assets to finance the acquisition of COMMON STOCK and WARRANTS was unlawful and the failure to disclose such intention constituted a material omission from the First and Second Tender Offers.

C. Representative Nature of Claims:

1. All Classes - The claims of all plaintiffs are typical of and fairly represent those of all Classes because all plaintiffs were security holders at all times herein complained to the present time. The MERGER PLAN and its withdrawal and the resultant conditioning of the market, manipulation of the prices of the securities and freeze out at grossly unfair prices, affects equally all plaintiffs and the members of all Classes. The MERGER PLAN and its withdrawal involve the same breach of fiduciary duty by all defendants, other than MARINE and CHEMICAL, owed by them to all members of all Classes and involve the same unlawful manipulative schemes and devices affecting all members of all Classes. The same breach of express and implied contracts to maintain all securities (other than the WARRANTS) listed on the New York Stock Exchange, and to maintain the WARRANTS listed on the American Stock Exchange, affects all members of all Classes equally. Similarly, the misrepresentations of the First and Second Tender Offers affected all members of all Classes alike.

2. Debenture Classes - The claims of plaintiffs BRUCKER and KAPLAN are typical of and fairly represent those of the DEBENTURE Classes because they are and have been registered owners of DEBENTURES continuously from prior to the First Tender Offer to the present time. Their claims arise from the delisting of the DEBENTURES

and COMMON STOCK and the acquisition by TBE of more than 90% of the COMMON STOCK and resultant constructive destruction of the conversion privilege, as well as the failure by the corporate defendants, other than WHITE, WELD and CHEMICAL, to send notice of the tender offers to said plaintiffs and the DEBENTURE Classes, and from the same manipulative schemes and devices as affect all DEBENTURE Classes.

3. Warrant Classes - The claims of plaintiffs HUSKEY and STRATTON are typical of and fairly represent those of the WARRANT Classes because they are and have been registered owners of WARRANTS continuously from prior to the First Tender Offer to the present time. Their claims arise from the delisting of the COMMON STOCK and the acquisition by TBE of more than 90% of the COMMON STOCK and resultant constructive destruction of their option to purchase privilege, and from the same manipulative schemes and devices as affect the whole WARRANT Class.

4. Common Stockholder Class - The claims of all plaintiffs are typical of and fairly represent those of the COMMON STOCK Class because they all arise from TBE's use of its control of INDIAN HEAD to foist the Merger Plan upon the Common Stockholders and attempt to freeze them out at unfair prices.

D. Superiority of Class Action - All Classes:

None of the members of any of the Classes would, on the basis of the facts herein alleged, have any desire or need to individually control the prosecution of separate actions, because the questions of fact and law are common to all and, in particular, because the interests of most of the members of each Class are so small as to prevent them from prosecuting this action.

E. Other Actions:

There are no other actions relating to the MERGER PLAN and its withdrawal and none on behalf of all Classes, except that subsequent to the filing of the original Complaint herein, a second action was commenced by William B. Weinberger, purportedly on behalf of a member of a DEBENTURE Class, and an action was commenced by Shamrock Corporation ("SHAMROCK") purportedly on behalf of the WARRANT Classes, claiming that the First and Second Tender Offers were false and misleading and, in its amended complaint, seeking divestiture of TBI's holdings of 90.6% of the COMMON STOCK and purporting to be on behalf of the COMMON STOCK Class as well. SHAMROCK has asserted an individual claim on its own behalf, later purported to be withdrawn, which plaintiffs herein allege disqualifies it as a representative of any class.

F. Venue:

The acts complained of involved the use of instrumentalities of interstate commerce, and occurred in or about, or have been initiated from, the City of New York; most of the parties are located in the City of New York, as are their counsel; and it is to the interests of all parties to concentrate the litigation of said claims in this District.

G. Manageability:

The questions of law and fact are common to all Class members, and therefore there will be no difficulty in the management of a class action.

H. Counsel:

Plaintiff's counsel is generally experienced in the types of claims herein comprehended.

I. Conflicts of Interest:

There are no actual or potential conflicts of interest between any members of the same Class or between members of different Classes because the injury to all has its genesis in the same facts: the making and withdrawal of the MERGER PLAN and the chilling and conditioning of the market for all securities, the breach of contract to list securities, and the First and Second Tender Offer misrepresentations, from which flow the same legal consequences to all Class members. All members of

each Class have been similarly mistreated, and the representative plaintiffs are in no different situation from any other Class members, except as to the amount of damages demanded herein.

THE PARTIES

FIFTH: The Plaintiffs.

A. Plaintiffs EDWARD BRUCKER and DANIEL R. KAPLAN, Trustees under the Trust Agreement dated November 15, 1968 made by WILTRUD E. GADBOYS, as Grantor, purchased an aggregate of $11,000 face amount DEBENTURES between January 22, 1969 and January 6, 1970, all of said DEBENTURES so purchased being continuously owned by them from the date of acquisition up to the present time.

B. Plaintiff CECIL B. HUSKEY beneficially owns an aggregate of 3,100 WARRANTS, of which he purchased 500 on June 26, 1973 and 500 on December 14, 1973.

C. Plaintiff W. T. STRATTON beneficially owns 6,000 WARRANTS which he has continuously owned since prior to January 1, 1973.

D. Plaintiff NORTE owns 32 shares of COMMON STOCK which it has owned continuously since February 1975.

SIXTH: The Defendants.

A. Defendant INDIAN HEAD, a Delaware corporation with principal business offices at 1211 Avenue of the Americas, City and State of New York, is

a broadly diversified company in containers, information technology, metal and automotive products, specialty textiles and utilities and communications products. It operates more than 50 plants, employing more than 9,000 people in the United States, Canada and Overseas.

B. Defendant TBE (formerly THYSSEN-BORNEMISZA GROUP N.V.) is a foreign, international industrial holding company with headquarters in Amstelveen, the Netherlands, and its activities include large-scale ship-building, transportation, distribution of natural gas, building materials production, storage, transshipment and transportation of bulk cargoes, chemicals and liquid gases, and the manufacture of agricultural machinery tools and sorting and packaging machinery.

C. Defendant TBI, a Maryland corporation and a wholly owned subsidiary of TBE, was formed by TBE for the express purpose of acquiring COMMON STOCK and WARRANTS and is the record owner thereof. COMMON STOCK and WARRANTS constitute TBI's only assets.

D. Defendant THYSSEN-BORNEMISZA HOLDINGS, INC. ("TBH") was to be and will be a corporation wholly owned by TBI and was to be and will be organized for the express purpose of having INDIAN HEAD merged into it.

E. Defendants JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALISTER, JOHN E. O'SULLIVAN and JAMES

E. ROBISON were at all times herein mentioned, to and including at least March 1975, directors of INDIAN HEAD. Defendant RICHARD J. POWERS, Chairman of INDIAN HEAD's Board, member of its Executive and Finance Committees, has been at all times herein mentioned, and now is, a director of INDIAN HEAD. Defendant ROBERT M. SCHWARZENBACH has been at all times herein mentioned, and now is, a director of INDIAN HEAD. Said defendants, as a group, tendered to TBI for cash, at $27 per share, an aggregate of more than 400,000 shares for which they received more than $13,000,000; and under the aborted MERGER PLAN they would have received $30 a share for their remaining 304,174 shares of COMMON STOCK, or a total of more than $9,000,000.

F. Defendant JAMES E. ROBISON, Chairman of INDIAN HEAD's Board and a director thereof for more than ten years to and including March 1975, was Chairman of its Finance Committee when the First Tender Offer was proposed to INDIAN HEAD. He and his family and associates owned more than 270,000 shares of COMMON STOCK, and after the successful completion of the First Tender Offer, TBE appointed him to its top policy-making Supervisory Board.

G. Defendant JAMES G. FERGUSON was at all times herein mentioned Executive Vice President of INDIAN HEAD and tendered to TBE 60,706 shares owned or controlled by him for $1,639,062 net cash.

H. Defendant MARSHALL F. SMITH is President and a member of the Executive Committee of INDIAN HEAD, having served continuously in those capacities since 1974.

I. Defendant L. EMERY KATZENBACH was at all times hereinafter mentioned a Member of the Board of WHITE, WELD, and between approximately 1971 and March 1974, was a Member of the Board of Directors of INDIAN HEAD.

J. Defendant H. H. THYSSEN-BORNEMISZA is an individual residing in Switzerland. He controls TBE through ownership of shares of [illegible]IC S.A., a Luxembourg holding company, whose principal business activity is holding all of the shares of TBE. He was at all times during 1973, 1974 and 1975 Chairman of the Supervisory Board of TBE and, since December 1974, Chairman of the Supervisory Board of Thyssen-Bornemisza N.V. ("TB"), the holding company of TBE.

K. Defendants GERARD B. HUISKAMP and HERBERT E. BACHRACH have been directors of INDIAN HEAD continuously since October 1973. They are the designees of TBE, on whose Board of Management they both serve with

defendant HUISKAMP, its Chairman and also a member of INDIAN HEAD's Executive and Finance Committees, while defendant BACHRACH, a director of TBE's Corporate Planning, is also a member of INDIAN HEAD's Compensation Committee.

L. Defendant MARINE is the Trustee under the INDENTURE.

M. Defendant CHEMICAL is a New Yor corporation and is INDIAN HEAD's WARRANT Agent pursuant to the WARRANT AGREEMENT.

N. Defendant WHITE, WELD & CO., INCORPORATED ("WHITE, WELD") is a corporation whose principal office is in New York, New York, and is a broker-dealer in securities and a member firm of the New York Stock Exchange and the American Stock Exchange.

O. Defendant R. L. GENILLARD was at all times during 1973, 1974 and 1975 the Deputy Chairman of the Supervisory Board of TBE and, since December 1974, the Deputy Chairman of TB, and until approximately July 1974, a Director of WHITE, WELD, and thereafter has been Vice Chairman of the Board of White, Weld Holdings, Inc., the parent of WHITE, WELD.

THE SECURITIES INVOLVED

SEVENTH: Common Stock.

A. Each share of COMMON STOCK is enti-

tled to one vote and was listed on the New York Stock Exchange continuously from prior to April 1, 1965 to August 30, 1974, when trading was suspended, and such shares were thereafter delisted.

B. 585,386 shares are now outstanding.

C. On September 27, 1973 there were approximately 5,425,000 shares issued and outstanding, and an additional 649,350 shares were reserved for issuance pursuant to the DEBENTURE conversion rights.

EIGHTH: Warrants

A. The WARRANTS were first offered in 1965, in an original issue of 400,000 WARRANTS, as part of an offering of $20,000,000 of DEBENTURES, pursuant to a Prospectus which represented that the COMMON STOCK was listed on the New York Stock Exchange and that application had been made for listing the WARRANTS on the American Stock Exchange.

B. Each WARRANT is issued pursuant to the WARRANT AGREEMENT entitling the holders through May 15, 1990 to purchase an aggregate of 400,000 shares of COMMON STOCK at the following exercise prices: $20 per share if exercised before the close of business on May 15, 1970; $25 per share to May 15, 1975; $30 per share to May 15, 1980; $35 per share to May 15, 1985; and $40 per share to May 14, 1990.

C. As of February 12, 1976, there were 384,554 WARRANTS outstanding.

D. The WARRANTS were continuously listed on the American Stock Exchange from May 1965 until trading was suspended on or about February 11, 1976 when the MERGER PLAN was announced. The suspension was lifted on or about March 5, 1976 when the MERGER PLAN was withdrawn.

NINTH: Debentures.

A. In April 1968, the DEBENTURES were offered to the public in the principal amount of $25,000,000 pursuant to a Prospectus which represented that INDIAN HEAD had applied for listing of the DEBENTURES on the New York Stock Exchange and that the COMMON STOCK reserved for issuance upon conversion had been listed on the New York Stock Exchange. Shortly thereafter, the DEBENTURES were listed on the New York Stock Exchange.

B. Each DEBENTURE is issued in denominations of $1,000; is registered in the name of the owner thereof; is part of an original issue in the aggregate principal amount of $25,000,000; and is subject to the terms and conditions of the INDENTURE.

C. All of the DEBENTURES were outstanding until about July 12, 1974, and $14,293,000 principal

amount of DEBENTURES are now outstanding.

D. Each DEBENTURE is convertible at any time, at the option of the owner, into 25.974 shares of COMMON STOCK, or a conversion price of $38.50 per share, and under INDENTURE §5:08:

> "The Company further convenants that, at any time when the Common Stock of the Company is listed on the New York Stock Exchange, or any other national securities exchange, the Company will, if permitted by the rules of such exchange, list and keep listed on such exchange, upon official notice of issuance, all shares of Common Stock issuable upon conversion of Debentures."
>
> [Emphasis supplied.]

E. Each DEBENTURE is redeemable, at INDIAN HEAD's option, according to a redemption schedule on the back of the DEBENTURE, the 1976 rate being 103.30% or $1,033.00.

F. The INDENTURE requires that notices to each DEBENTURE owner be mailed to him at his last address appearing on the registration books of INDIAN HEAD.

G. In the event of default, the principal amount of the DEBENTURE, with accrued interest, becomes immediately due and payable. (§8:01(d)).

H. The DEBENTURES were continuously traded on the New York Stock Exchange from their original issuance

in 1968 until August 30, 1974, when they were delisted.

TENTH: Security Prices.

The market prices of the COMMON STOCK, DEBENTURES and WARRANTS were as shown on the following table:

INDIAN HEAD COMMON STOCK[1] WARRANTS[2] AND CONVERTIBLE DEBENTURES[1]

MARKET PRICES[3] AND VOLUME

		1965	1966	1967	1968	1969	1970	1971	1972	1973	1974
INDIAN HEAD COMMON STOCK[4]	Hi	21	26 6/8	42 4/8	46 4/8	42 4/8	26	33 5/8	30 3/8	27 4/8	
	Lo	15 6/8	16 6/8	18 5/8	29 4/8	22 3/8	14	24 6/8	22 1/8	15 2/8	
	Last	20 4/8	18 3/8	41 2/8	42 2/8	24 5/8	26	28 2/8	25 6/8	17 3/8	
	Volume (000)	400.1	531.8	1,035.3	877.1	838.1	599.3	1,129.6	1,140.3	776.8	
INDIAN HEAD WARRANTS DUE MAY 1, 1990[4]	Hi	10 7/8	10 4/8	26 6/8	30	26	11 2/8	14	14 5/8	11	6
	Low	6 3/8	4	8 1/8	16 2/8	8 4/8	5 4/8	9 1/8	8 4/8	3 7/8	5/8
	Last	9 3/8	8	26 4/8	24 6/8	9 6/8	10	12 1/8	8 4/8	4	5/8
	Volume	101.5	194.0	397.5	423.0	307.7	189.4	386.4	271.7	189.8	221.1
CONVERTIBLE DEBENTURES DUE MAY 15, 1993 4,5	Hi				129	119 4/8	83 1/8	97 1/8	90 4/8	87 5/8	
	Low				100	70	59 1/8	83	79 4/8	61 4/8	
	Last				116	75	83 1/8	89	80	63 3/8	
	Volume (000)				$9,269	$8,916	$5,353	$6,254	$6,291	$2,338	

1 New York Stock Exchange
2 American Stock Exchange
3 Source: Dow Jones Investors Handbook, Dow Jones Books, Princeton, New Jersey (annual editions, published in following year; i.e. 1965 prices appear in 1966 volume)
4 Fractions are in eighths
5 Although issued in $1,000 denominations, the Convertible Debentures are quoted in tenths

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ELEVENTH:

A. The closing prices on July 1, 1974 of COMMON STOCK and DEBENTURES on the New York Stock Exchange, and WARRANTS on the American Stock Exchange, were 21-3/4, 65-1/2 (quoted on 100-point basis) and 4-3/4, respectively.

B. Since the issuance of the WARRANTS and DEBENTURES, the WARRANTS have traded as high as 30 on the American Stock Exchange, and the COMMON STOCK and the DEBENTURES on the New York Stock Exchange as high as 46-1/2 and 129, respectively.

TWELFTH:

A. From the date of the delisting of the DEBENTURES to January 1976, over-the-counter prices ranged for the DEBENTURES from approximately 45 to 58, with slight volume; for the COMMON STOCK, from 15-1/2 to 20-1/2; and for the WARRANTS, from 7/8 to 2-1/8.

B. On February 11, 1976, the day the MERGER PLAN was announced, the high and low prices for the WARRANTS and COMMON STOCK were 2 to 2-1/8 and 25-5/8 to 24, respectively.

C. Each DEBENTURE and each WARRANT has approximately 17 and 14 years, respectively, before it expires by its terms.

D. Between February 12, 1976 and March 5, 1976, when the MERGER PLAN was withdrawn, the over-the-counter prices for the DEBENTURES ranged from 75 to 56-1/2; for the WARRANTS from 1 to 1-1/2, and for the COMMON STOCK from 29-1/2 to 28.

E. Since March 6, 1976 the over-the-counter prices have not exceeded 74 for the DEBENTURES, 2-1/8 for the WARRANTS, and 28 for the COMMON STOCK.

THE FACTS

A. THE FIRST TENDER OFFER.

THIRTEENTH:

A. On September 19, 1973, prior to the First Tender Offer, INDIAN HEAD and TBE entered into a "Memorandum of Understanding", under which:

(i) INDIAN HEAD agreed to sell TBE 750,000 shares of COMMON STOCK at $27 per share;

(ii) INDIAN HEAD agreed to co-operate with TBE in the First Tender Offer; and

(iii) TBE agreed to buy from the directors of INDIAN HEAD up to 50,000 of their shares and to name ROBISON to the TBE Supervisory Board (which makes TBE policy), if the First Tender Offer succeeded.

B. On September 27, 1973, TBE sent to holders of COMMON STOCK the required statutory notice, in a formal offer to purchase document ("1973 OFFER"), of its tender offer for 1,100,000 shares of COMMON STOCK at $27 per share.

C. Paragraph 9 of the 1973 OFFER represented that TBE proposed to acquire 26% to 32% of the COMMON STOCK, but that it had no present intention to seek control of INDIAN HEAD, nor did it intend to develop plans to merge it.

D. Paragraph 13 of the 1973 OFFER revealed that:

> "The Department of Stock List of the New York Stock Exchange has indicated that <u>if the ownership by TBE of Indian Head Common Stock should rise above 32%</u> (or 30%, if 30% or less is purchased pursuant to this Offer and the Agreement referred to above) <u>such additional ownership might ultimately result in the delisting of Indian Head Common Stock from the Exchange</u>."
>
> [Emphasis supplied.]

E. Neither the 1973 OFFER nor any notice of that tender offer, or of the possible ultimate COMMON STOCK delisting, was sent to holders of DEBENTURES or WARRANTS.

F. The First Tender Offer terminated on

October 10, 1973 with TBE purchasing for cash 1,200,000 (instead of 1,100,000) shares from the holders of COMMON STOCK and 750,000 shares from INDIAN HEAD, giving it approximately 33.9% of the COMMON STOCK for which it paid, in cash, more than $50,000,000.

G. No notice was ever sent to the holders of DEBENTURES or WARRANTS that TBE had acquired nearly 2% more COMMON STOCK than the New York Stock Exchange had indicated might ultimately result in the delisting of the COMMON STOCK.

H. In the First Tender Offer, defendant directors sold approximately 67,000 of their shares to TBE for a total of more than $1,809,000 and defendant ROBISON was thereafter named to TBE's top policy-making Supervisory Board.

B. SUBSEQUENT EVENTS.

FOURTEENTH: On December 19, 1973 --

> when defendant ROBISON was a member of TBE's top Supervisory Board and defendants HUISKAMP and BACHRACH were also INDIAN HEAD directors --

TBE made a $50,000,000 credit agreement which it used to help finance its forthcoming July 1974 acquisition of control of INDIAN HEAD, but no notice thereof was ever sent to the holders of DEBENTURES and WARRANTS.

FIFTEENTH: In January 1974, defendant MARINE caused to be sent to the holders of DEBENTURES, INDIAN HEAD's 1973 Annual Report, which contained only the following reference, on page 3 of the President's Letter, to TBE's acquisition of 33.9% of the COMMON STOCK:

> "THYSSEN-BORNEMISZA GROUP, N.V.
> During the last quarter of 1973, Indian Head established an important relationship with a major industrial firm in Europe. In October, the Thyssen-Bornemisza Group, N.V. (TBG), a Netherlands-based industrial firm, acquired 1.2 million shares of Indian Head common stock at $27 per share through a tender offer. An additional 750,000 shares of common stock, also at $27 per share, were sold to TBG directly by Indian Head. This new relationship could lead to mutually beneficial business opportunities here and abroad."

SIXTEENTH: The Annual Report omitted disclosure:

A. That the New York Stock Exchange had indicated it might ultimately delist the COMMON STOCK; and,

B. Of TBE's $50,000,000 financing arrangements which it would use for ultimate acquisition of control of INDIAN HEAD.

C. THE SECOND TENDER OFFER.

SEVENTEENTH:

A. Prior to July 12, 1974, INDIAN HEAD and its directors agreed to cooperate with TBE in a Second Tender Offer for all COMMON STOCK and unexercised WARRANTS, and certain unexercised Employee Stock Options, and TBE agreed to buy from the defendant directors as much of their COMMON STOCK as they chose to tender.

B. On July 12, 1974, TBE sent to the holders of COMMON STOCK and WARRANTS statutory notice in a formal offer to purchase document ("1974 OFFER") of its tender offer for:

> (1) "All outstanding shares of Common Stock, $1.00 par value (the "Common Stock"), of INDIAN HEAD, INC. (the "Company") from the holders thereof at $27 per share in cash net to the seller"; and,
>
> (2) "All outstanding Warrants to purchase shares of Common Stock of the Company (the "Warrants") from the holders of such Warrants at $2 per Warrant in cash net to the seller . . ."
>
> [Emphasis supplied.]

as well as to purchase unexercised Employee Stock Options where the exercise price was less than $27 per share, for the excess of $27 over the exercise price, in cash.

C. Paragraph 13 of the 1974 OFFER revealed:

> "Stock Exchange Listing Status. Depending upon the number of shares tendered and purchased pursuant to this

Offer, the Common Stock may no longer meet the requirements of the New York Stock Exchange for continued listing and the Exchange may, therefore, delist the shares. Published guidelines of the Exchange indicate that it would consider delisting the Common Stock if the number of publicly held shares was less than 600,000 or if there were fewer than 1,200 holders of 100, or more shares (i.e. round lot holders). Moreover, in connection with the purchase by TBG of its present holdings of Common Stock as described in Paragraph 10, the Exchange stated that it would review the continued listing of the Common Stock in the event TBG acquired any additional shares of Common Stock. In such a review, the staff of the Exchange indicated that it would probably commence action to delist the Common Stock even if the guidelines set forth above are met. TBG cannot predict whether any action commenced by the staff of the Exchange to delist the Company's Common Stock would be successful or what delisting would have on the market for the Common Stock. Registration of the Common Stock under the Securities Exchange Act of 1934 may be terminated if the Common Stock is delisted and there are fewer than 300 holders of record of shares of the Common Stock. Such termination would substantially reduce the information required to be furnished by the Company to its stockholders."

[Emphasis supplied.]

D. TBE stated in Paragraph 9 of the 1974 OFFER that it intended to obtain control of INDIAN HEAD through the vehicle of TBI, but did not indicate any intention to merge:

"Purpose of This Offer. TBG expects to purchase a substantial majority of the Common Stock as a result of this Offer and thereby acquire control of the Company.

"TBG anticipates that promptly after the Initial Expiration Date it will transfer the shares purchased or to be purchased pursuant to this Offer to Thyssen-Bornemisza Inc. (TBI), a wholly owned U.S. subsidiary which will assume the obligations for all borrowings incurred or to be incurred under the revolving credit agreement described in Paragraph 11. Such transfer will not in any manner relieve TBG of its obligations under this Offer. It is TBG's intention to acquire, directly or through TBI, stock having more than 80% of the voting control of the Company, either through this Offer or as a result of purchases made at some future date as indicated in the next paragraph. In the event TBG so acquires 80% of the voting control of the Company, it expects to transfer to TBI all its stock in the Company which it then owns."

E. TBE committed to pay an aggregate of $105,121,777 for all of the outstanding COMMON STOCK and WARRANTS, plus a maximum additional $910,000 for Employee Stock Options.

F. The 1974 OFFER disclosed that INDIAN HEAD directors, including defendant directors, owned and proposed to tender COMMON STOCK as follows:

	Owned (after Proposed Gifts and Transfers)	To Be Tendered	To Be Retained
James M. Flack	94,525	64,524- 84,524	30,000- 10,000
Andrew Kalman	116,184	80,000-100,000	36,184- 16,184
Paul W. McAlister	71,343	50,000- 60,000	21,343- 11,343
John E. O'Sullivan	33,624	20,000- 30,000	13,624- 3,624
Richard J. Powers	17,325	8,000- 11,000	9,325- 6,325
James E. Robison	263,152	80,000-100,000	183,152-163,152
Robt. M. Schwarzenbach	73,724	30,000- 50,000	43,724- 23,724
Marshall F. Smith	4,623	-0- 2,300	4,623- 2,323

G. None of the members of the WARRANT Class (and none of the Employee Stock Option holders) to whom the 1974 OFFER was mailed had exercised their respective rights to buy COMMON STOCK.

EIGHTEENTH: Neither the 1974 OFFER nor any notice thereof was sent or mailed to the DEBENTURE Class.

NINETEENTH: No notice was ever sent or mailed to the holders of DEBENTURES disclosing that the COMMON STOCK might no longer meet the requirements of the New York Stock Exchange for continued listing and might be delisted and that the Exchange might also delist the DEBENTURES.

TWENTIETH: No notice was ever sent or given to any of the members of any Class that TBE intended to merge INDIAN HEAD out of existence.

TWENTY-FIRST: Pursuant to the Second Tender Offer, which expired on August 19, 1974, TBI acquired 3,687,000 shares of COMMON STOCK for an aggregate cash price of $99,549,000; together with 1,950,000 previously acquired shares, it then held 5,637,000 shares.

TWENTY-SECOND: Continuously since August 19, 1974 TBI has owned more than 90% of the approximately 6.1 million shares of COMMON STOCK outstanding, for which was paid in cash a total of more than $150,000,000.

TWENTY-THIRD: Upon consummation of the Second Tender Offer, INDIAN HEAD officers and directors, as a group, had tendered, in both tender offers, more than 542,000 shares of COMMON STOCK for which they received approximately $14,634,000; defendant directors tendered 432,069 shares, and defendant FERGUSON tendered 60,706 shares.

TWENTY-FOURTH: INDIAN HEAD's officers and directors now own in the aggregate more than 250,000 shares of COMMON STOCK and more than 31,000 WARRANTS.

D. THE MERGER PLAN.

TWENTY-FIFTH: On February 11, 1976, defendant TBI announced the MERGER PLAN (which the Wall Street Journal reported on February 12, 1976) in a press release reproduced on the following pages:

Thyssen-Bornemisza

Press Release

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Thyssen-Bornemisza Inc.
c/o Indian Head
1211 Avenue of the Americas
New York, New York 10036
Telephone (212) 764-3100

Stuart Pearlman
Director of Communications
Direct Line (212) 764-3131

THYSSEN-BORNEMISZA TO MERGE INDIAN HEAD INTO WHOLLY-OWNED SUBSIDIARY

NEW YORK, Feb. 11 -- Thyssen-Bornemisza Inc. (TBI) announced today that it intends to cause the merger of Indian Head Inc. into a wholly-owned subsidiary of TBI on March 19, 1976 or as soon as practicable thereafter. TBI presently owns approximately 90.6 per cent of the outstanding common stock of Indian Head.

Under the terms of the proposed merger, holders of outstanding Indian Head common stock will receive $30 cash per share.

The plan to merge will have the following effects on other publicly held outstanding Indian Head securities:

-- Indian Head series A preferred stock will be called prior to the merger for redemption at $100 per share plus accrued dividends to the redemption date of March 19 as required by the series A preferred stock provisions.

-- Both issues of outstanding Indian Head subordinated debentures will be assumed by Thyssen-Bornemisza Holdings, Inc., the new subsidiary of TBI. After the merger, the holders of the convertible debentures will no longer have the right to convert to Indian Head common stock but may surrender them and receive an aggregate of $779.22 cash for each $1,000 principal amount of debentures. However, no accrued interest is payable on the convertible debentures if they are surrendered before their March 31, 1976 record date for payment of interest.

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-- There is no requirement that the convertible debentures be surrendered for cash. They may be held until maturity (1993) and earn the regular interest payments.

-- Under the Warrant Agreement, any holder of a warrant who might choose to exercise his warrant after the merger would receive $30 in cash -- that is, an amount equal to the required $30 exercise price. The $30 is the permanently fixed cash value of an exercised warrant after the merger because the Warrant Agreement provides that a holder will be entitled to purchase only the kind and number of shares of stock or other securities or property to which he would have been entitled if he had held the Indian Head common stock issuable upon exercise of the warrant immediately prior to the merger.

Indian Head securities are traded over-the-counter through the National Association of Securities Dealers, except for the warrants which are traded on the American Stock Exchange.

Thyssen-Bornemisza Inc. is a U.S. subsidiary of Thyssen-Bornemisza N.V., a privately owned industrial holding company.

# # #

TBI-1 021176

E. INJUNCTION PROCEEDING.

TWENTY-SIXTH: On February 23, 1976, plaintiffs BRUCKER and KAPLAN, as representatives of the DEBENTURE, WARRANT and COMMON STOCK Classes, obtained an order to show cause, returnable in this Court on March 4, 1976, why the merger should not be enjoined.

F. MERGER PLAN WITHDRAWAL.

TWENTY-SEVENTH: On March 4, 1976, defendants announced that the MERGER PLAN was withdrawn, and a press release announcing withdrawal of the MERGER PLAN was published on March 5, 1976.

FIRST CLAIM

TWENTY-EIGHTH: This claim arises under Section 10b of the '34 ACT (15 USC Section 78j) ("Section 10b") and Rule 10b-5 of the Rules and Regulations thereunder ("Rule 10b-5").

TWENTY-NINTH: Under the MERGER PLAN the DEBENTURES, which still have seventeen years to expiration, were offered $779.22, when the redemption price was $1,033; the WARRANTS, which still had fourteen years to expiration, were offered nothing, despite the fact that they had traded as high as $30 and that in an open market such a

warrant has a value because such investors are always willing to pay for the potential for appreciation; and the COMMON STOCK, which TBE acquired in 1974 for $27, and which has since earned net an additional $7.00 per share, was offered only $30.

THIRTIETH: TBE's ownership of approximately 90.6% of COMMON STOCK, through TBI, empowers it to control INDIAN HEAD and to dictate whether or not INDIAN HEAD is to be merged, liquidated, divided or otherwise manipulated.

THIRTY-FIRST: The MERGER PLAN had no business purpose, was designed to and had the effect of permitting TBI to acquire the WARRANTS, DEBENTURES and COMMON STOCK (together, the "SECURITIES") at a discount price in derogation of the rights and interests of all owners of SECURITIES, aided and abetted by defendants other than MARINE and CHEMICAL.

THIRTY-SECOND: The MERGER PLAN was a manipulative and deceptive device in breach of the federal securities laws.

THIRTY-THIRD: By reason of the foregoing the defendants and each of them, other than MARINE and CHEMICAL, have engaged in schemes, devices and a course

of conduct to defraud all owners of SECURITIES in violation of Section 10b and Rule 10b-5.

THIRTY-FOURTH: By reason of the foregoing the defendants, other than MARINE and CHEMICAL, must be enjoined from directly or indirectly purchasing any SECURITIES, and the owners of SECURITIES are entitled to an order paying to them, as their interests may appear, their aliquot share and interests in the business and assets of INDIAN HEAD to the same extent, giving effect to the value of their rights and interests unlawfully taken by the defendants, as they would be entitled to receive upon a dissolution and liquidation of INDIAN HEAD.

SECOND CLAIM

THIRTY-FIFTH: This claim arises under Section 10b and Rule 10b-5.

THIRTY-SIXTH: The defendants having undervalued the SECURITIES, the withdrawal of the MERGER PLAN conditioned the market for them, leaving it in a state of such uncertainty as to effectively destroy, for the foreseeable future, its viability as a reflector of fair values.

THIRTY-SEVENTH: The withdrawal of the MERGER PLAN was designed, and had the effect of, solely benefitting TBE, in patent disregard of the rights of the owners of SECURITIES.

THIRTY-EIGHTH: The MERGER PLAN and its withdrawal represent a course of conduct, aided and abetted by the defendants other than MARINE and CHEMICAL, designed and having the effect of destroying the marketability of SECURITIES and freezing out all minority security interests at unfair prices.

THIRTY-NINTH: By reason of the foregoing the defendants other than MARINE and CHEMICAL have engaged in a course of conduct and schemes and devices to manipulate the prices of the securities and to freeze out the owners thereof at depressed prices in violation of Section 10b and Rule 10b-5, and the owners of SECURITIES are entitled to an injunction against the continuation and maintenance of such practices.

THIRD CLAIM

FORTIETH: This claim arises under common law over which this Court has pendent jurisdiction.

FORTY-FIRST: The MERGER PLAN constitutes a redemption, at $1,033, of the DEBENTURES under the INDENTURE and was irrevocable because TBE solely and exclusively controlled its making and its withdrawal.

FORTY-SECOND: By reason of the foregoing the members of the DEBENTURE Class are entitled to specific performance of their redemption rights.

FOURTH CLAIM

FORTY-THIRD: This claim arises under Section 10b and Rule 10b-5 and common law.

FORTY-FOURTH: Although owning 90.6% of COMMON STOCK, TBE through TBI, aided and abetted by the other defendants other than MARINE and CHEMICAL, has acted and continues to act as if it owns 100% of the COMMON STOCK, in disregard of the rights of the minority stockholders.

FORTY-FIFTH: Said use of all of the business and assets of INDIAN HEAD for no business purpose except the service of TBE's own private interest constitutes a breach of fiduciary duty owed by the defendants other than MARINE and CHEMICAL to all of the owners of SECURITIES, as well as a course of conduct, scheme and device in violation of Section 10b and Rule 10b-5 and represents an unlawful use and arrogation to the defendants of the property, interests and rights of all of the owners of SECURITIES.

FORTY-SIXTH: The corporate defendants who control INDIAN HEAD, other than MARINE and CHEMICAL, and the individual defendants who comprise INDIAN HEAD's management and Board of Directors owe a fiduciary duty to the members of each Class, which they breached by the making and withdrawal of the MERGER PLAN and the manipulative devices aforesaid, and by purporting to withdraw the redemption of the DEBENTURES.

FIFTH CLAIM

FORTY-SEVENTH: This claim arises under Section 10b and Rule 10b-5, and under the common law over which this Court has pendent jurisdiction.

FORTY-EIGHTH: The individual defendants owed and owe a fiduciary duty to plaintiffs and the class, as have TBE, TBI and TBH, since TBE's acquisition of 33.9% of the COMMON STOCK.

FORTY-NINTH: In August 1973, TBE learned through its investment banker, WHITE, WELD, which was also INDIAN HEAD's investment banker, that INDIAN HEAD's long range prospects for growth and earnings were excellent, its assets far more valuable than shown on its books, and TBE was induced thereby to seek to acquire all of INDIAN HEAD.

FIFTIETH: In August 1973, TBE embarked upon a course of conduct, scheme, device and plan to acquire all of INDIAN HEAD, in violation of Section 10b and Rule 10b-5 (the "PLAN"), by buying a third of the COMMON STOCK and later, the remainder; if any stockholder refused to sell, the market for the SECURITIES would be chilled and the owners frozen out at discount prices.

FIFTY-FIRST: The First and Second Tender Offers were both fraudulent, deceptive and manipulative transactions

and were both part of the PLAN whereby the defendants intended to transfer control of INDIAN HEAD to TBE and thereby to defendant H. H. THYSSEN-BORNEMISZA with the intent of wrongfully impairing and eventually destroying the rights of the holders of SECURITIES.

FIFTY-SECOND: Pursuant to the PLAN, TBE offered to buy and acquired, in October 1973, 33.9% of the COMMON STOCK at $27 per share, a price above market and approximately equal to book value, but less than going concern values and future prospects.

FIFTY-THIRD: TBE then offered, in the materially misleading 1974 OFFER , the same $27 price for all COMMON STOCK, concealing from the offerees and the investing public the PLAN.

FIFTY-FOURTH: Each corporate defendant, other than CHEMICAL, aided and abetted TBE in the PLAN; each of the individual defendants agreed to aid and abet TBE in acquiring INDIAN HEAD and thereafter merging INDIAN HEAD into TBE and freezing out the remaining owners of COMMON STOCK, in exchange for TBE's agreement to purchase their shares for the same $27 price, and further, for the agreement of TBE to name defendant ROBISON to TBE's top policy-making Supervisory Board and to retain the management and directors of INDIAN HEAD in such capacities indefinitely.

FIFTY-FIFTH: As an integral part of said PLAN, the defendants, other than CHEMICAL, agreed to and did in fact aid and abet TBE:

A. In acquiring control of INDIAN HEAD;

B. In acquiring as close to 100% of the COMMON STOCK as possible, which they knew or should have known would result in delisting all of INDIAN HEAD's SECURITIES and in the frustration, if not destruction, of any viable market thereafter, and

C. In completely concealing, as long and to as large an extent as possible, the PLAN, and when required by statute or regulation to disclose any portion thereof, in concealing as much material information with respect thereto as they could.

FIFTY-SIXTH: Pursuant to said PLAN, defendants singly and in concert breached and caused to be breached:

A. The notice provisions of the INDENTURE and of the WILLIAMS ACT,

B. INDIAN HEAD's notice obligations under the rules of the New York Stock Exchange and the American Stock Exchange with respect to the SECURITIES,

C. INDIAN HEAD's implied obligations to give notice thereof to all owners of SECURITIES, and

D. The purpose and intent of the INDENTURE and the WARRANT AGREEMENT,

by failing and refusing to send to and advise holders of SECURITIES of, notice of TBE's proposed and actual take-over of INDIAN HEAD and the delisting and frustration, if not destruction, of the market for the SECURITIES.

FIFTY-SEVENTH: In furtherance of the PLAN the defendant directors benefited themselves by selling some of their COMMON STOCK to TBE at $27 per share while retaining more than 300,000 shares to be sold in the merger at $30 per share, $3 per share more than the public COMMON STOCK and WARRANT holders were to receive; defendant FERGUSON benefited himself to the extent of $1,627,695; and the directors made no effort to enable any owners of SECURITIES to enjoy similar benefits and denied to them such benefits; and defendant ROBISON secured his appointment to the TBE Supervisory Board, which he obtained by virtue of his control and use of INDIAN HEAD.

FIFTY-EIGHTH: The statements in the 1973 OFFER were untrue and misleading in that:

A. TBE intended to acquire control of INDIAN HEAD by means of the First Tender Offer, both by itself and as part of a scheme to do so and to thereafter merge INDIAN HEAD into a directly or indirectly wholly owned subsidiary of TBE.

B. The funds requisite to effect the First Tender Offer and the purchase of 750,000 shares of COMMON STOCK were to be supplied through the mechanism of a sale to TBI of the shares acquired by TBE, by borrowings from banks, and ultimately by INDIAN HEAD.

FIFTY-NINTH: The 1973 OFFER omitted to state the following material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading:

A. The sale of 750,000 shares by INDIAN HEAD to TBE upon consummation of the First Tender Offer had no business purpose but was part of the scheme whereby control of INDIAN HEAD would be transferred to TBE.

B. TBE would be in a position, following the consummation of the First Tender Offer, to exercise control over INDIAN HEAD.

C. TBE intended to acquire greater control of INDIAN HEAD through transactions other than the transactions described in the First Tender Offer, to wit, a Second Tender Offer and subsequent merger of INDIAN HEAD into a wholly owned subsidiary.

D. TBE and INDIAN HEAD intended the supplementary agreement, referred to in Item 12 of the 1973 OFFER, to provide more than the inconsequential matters referred

therein, to wit, (i) that INDIAN HEAD would be committed to register the COMMON STOCK owned by TBE under the '33 ACT without consideration to INDIAN HEAD, and to undertake further obligations with respect thereto, and (ii) that INDIAN HEAD would be permitted to participate in investments to be made by TBE, with the result that TBE could acquire greater percentage control of companies in which investments would be made by using a smaller amount of its own funds than if INDIAN HEAD did not participate in said investments.

E. An effect of the First Tender Offer would be the substantial impairment of the value of the WARRANTS and COMMON STOCK.

F. TBE intended to impair the value of the WARRANTS by eliminating the New York Stock Exchange market for the COMMON STOCK.

G. TBE intended to acquire all shares tendered without regard to the ceiling of 1,100,000 shares stated in the 1973 OFFER.

SIXTIETH: The 1974 OFFER omitted to state the following material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading:

A. The funds to be used by TBE to make the

purchases under the Second Tender Offer were to be acquired by TBE through sale of the shares acquired to TBI, by borrowings from banks, and ultimately by INDIAN HEAD.

B. The price at which TBE offered to purchase the WARRANTS and COMMON STOCK was not based upon a fair assessment of the value thereof, but was fixed arbitrarily by TBE without reference to the fair value thereof.

C. TBE would partially finance the purchase contemplated by the Second Tender Offer by a transfer of funds from INDIAN HEAD to TBI.

D. TBE intended to impair the value of the WARRANTS and COMMON STOCK by eliminating the New York Stock Exchange market for the COMMON STOCK and to destroy the value of the WARRANTS by the merger of INDIAN HEAD into a wholly owned subsidiary.

SIXTY-FIRST: At the time of both tender offers, defendants knew that the offers contained the above-mentioned omissions and that the omissions made the statements made misleading.

SIXTY-SECOND: By reason of the foregoing, TBE was enabled:

A. To buy the COMMON STOCK below its fair value;

B. To substantially reduce the amount of cash or credit it required for obtaining control of INDIAN HEAD; and,

C. To use the business and assets of INDIAN HEAD for its own exclusive benefit.

SIXTY-THIRD: As a result of the foregoing:

A. INDIAN HEAD and the defendant directors, aided and abetted by the corporate defendants, other than MARINE and CHEMICAL, breached and are breaching the INDENTURE and the WARRANT AGREEMENT, and the fiduciary obligations they owed and owe to each member of each Class.

B. From and after TBE's acquisition of 33.9% of the COMMON STOCK, the corporate defendants, other than MARINE and CHEMICAL, violated the fiduciary obligations they owe as controlling persons of INDIAN HEAD to each member of each Class.

C. From and after its acquisition of 90.6% of the COMMON STOCK, TBE, aided and abetted by TBI, has violated and continues to violate the fiduciary obligations it owes to plaintiffs and the class; has caused and permitted INDIAN HEAD to be in default under the INDENTURE and to breach the WARRANT AGREEMENT and its obligations to the holders of COMMON STOCK, and TBE is taking advantage of its control and the captive position of all SECURITIES

through the manipulations herein described.

D. TBI and TBH stand in the shoes of TBE and have violated and violate the fiduciary obligations owed to each member of each Class, all to the irreparable injury and damage of each of them.

SIXTY-FOURTH: By reason of the foregoing:

A. Each member of the DEBENTURE Seller Class is entitled to payment of principal on his DEBENTURE less the net amount actually received from the sale thereof;

B. Each member of the DEBENTURE Class is entitled to redeem each DEBENTURE at $1,033 or its fair going concern value, which was unlawfully destroyed by the conduct herein alleged, whichever is greater;

C. Each member of the WARRANT and COMMON STOCK Classes is entitled to the fair going concern value of the WARRANTS and COMMON STOCK which was unlawfully destroyed by the conduct herein alleged.

SIXTY-FIFTH: By reason of the foregoing each member of each Class is entitled to such other and additional damages and punitive damages as may be determined.

SIXTH CLAIM

SIXTY-SIXTH: This claim arises under Section 10b and Rule 10b-5.

SIXTY-SEVENTH: Listing of the SECURITIES on the New York or American Stock Exchanges is a material advantage for the respective owners thereof.

SIXTY-EIGHTH: The statements in the 1965 WARRANT Prospectus as to the listing of the SECURITIES on some exchanges were meant to be accepted as a promise that the listings would be continued.

SIXTY-NINTH: The provision in the INDENTURE that the COMMON STOCK will be listed and kept listed was meant to be and accepted as a commitment that the listing would be continued.

SEVENTIETH: The statements in the 1965, 1967 and 1968 Prospectuses relating to the listing of the SECURITIES and the provision in the INDENTURE for listing, were made to induce the purchase of SECURITIES and did so induce prospective purchasers thereof.

SEVENTY-FIRST: The twenty-five year terms of the WARRANTS and DEBENTURES were made to induce the purchase thereof because the long life of instruments afforded the opportunity of profitable participation in the growth of

INDIAN HEAD over the years, and did so induce prospective purchasers of WARRANTS and DEBENTURES.

SEVENTY-SECOND: The right of the owner of SECURITIES other than COMMON STOCK to hold them or convert them is a valuable economic right.

SEVENTY-THIRD: The listing of the COMMON STOCK on the New York Stock Exchange was made and expected by INDIAN HEAD to induce the purchase of COMMON STOCK and did so induce prospective purchasers of COMMON STOCK.

SEVENTY-FOURTH: By reason of the listing of the COMMON STOCK on the New York Stock Exchange and its continued listing thereon over many years, INDIAN HEAD assumed an implied obligation to all such purchasers of COMMON STOCK to continue and maintain such listing.

SEVENTY-FIFTH: When TBE acquired 33.9% of the COMMON STOCK in October 1973, it assumed the same duty to the owners of SECURITIES to continue and maintain such listings.

SEVENTY-SIXTH: The acts of TBE hereinbefore described, aided and abetted by the defendants other than MARINE and CHEMICAL, represented a course of conduct and scheme to destroy the express and implied contract rights of the owners of SECURITIES as aforesaid and did in fact destroy them, in violation of Section 10b and Rule 10b-5.

SEVENTY-SEVENTH: By reason of the foregoing, each member of each Class is entitled to an order paying him, as his interest may appear, his aliquot share and interest in the business and assets of INDIAN HEAD, to the same extent giving effect to the value of his rights and interests unlawfully taken by the defendants, as he would be entitled to receive upon a dissolution and liquidation of INDIAN HEAD.

SEVENTH CLAIM

SEVENTY-EIGHTH: This claim arises under Section 10b and Rule 10b-5.

SEVENTY-NINTH: When plaintiffs and the Class bought their DEBENTURES, both the DEBENTURES and the COMMON STOCK were listed on the New York Stock Exchange.

EIGHTIETH: INDIAN HEAD committed itself in the INDENTURE to "list and keep listed all shares of common stock issuable upon conversion of debentures" (§5:08). [Emphasis supplied.]

EIGHTY-FIRST: When INDIAN HEAD caused the DEBENTURES to be listed on the New York Stock Exchange, it assumed the implied obligation to cause said listing to be maintained in the same manner as provided in the INDENTURE with respect to the COMMON STOCK.

EIGHTY-SECOND: When the First Tender Offer was made, the defendants (a) knew that the New York Stock Exchange had indicated that there was a possibility that the COMMON STOCK might be delisted if TBE acquired more than 32%; and (b) knew or should have known that the DEBENTURES might also be delisted.

EIGHTY-THIRD: Through the First Tender Offer, TBE acquired 33.9% of the COMMON STOCK.

EIGHTY-FOURTH: When the Second Tender Offer was made, and assuming its completion, the defendants, (a) knew that the COMMON STOCK would be delisted and (b) knew or should have known that the DEBENTURES would be delisted.

EIGHTY-FIFTH: The defendants, knowing that the delisting of the COMMON STOCK and the DEBENTURES would have a material adverse effect on the marketability of the DEBENTURES and on the value of the conversion right and would materially and substantially alter the nature of the DEBENTURE owners' investment, nevertheless thereafter concealed and withheld from the DEBENTURE owners those facts, continuously from at least September 27, 1973.

EIGHTY-SIXTH: Each separate act and fact of commission and omission resulted in the continuous failure of INDIAN HEAD to duly observe and perform its convenant and agreement in the INDENTURE to list and keep the COMMON

STOCK listed, and its implied obligation to list and keep the DEBENTURES listed, creating separate events of default under the INDENTURE, each of which continues to the present time without having been remedied, aided and abetted by the defendants, other than CHEMICAL.

EIGHTY-SEVENTH: Under the INDENTURE each such act of default has resulted in the acceleration of the payment of principal and accrued interest, no part of which has been paid.

EIGHTY-EIGHTH: The acts of the defendants herein described involve devices, schemes and artifices to defraud the DEBENTURE Classes, as well as omissions to state material facts necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading, as well as acts, practices and an entire course of business which operated as a fraud and a deceit upon the DEBENTURE Classes, in violation of Section 10b and Rule 10b-5.

EIGHTY-NINTH: By reason of the foregoing, every member of the DEBENTURE Classes is entitled to exercise his rights of default under the INDENTURE and to have the principal of each DEBENTURE with accrued interest paid immediately, less the proceeds of any sale.

EIGHTH CLAIM

NINETIETH: This claim arises under Section 10b and Rule 10b-5.

NINETY-FIRST: In the approximately eighteen months since TBE acquired more than 90% of the COMMON STOCK the DEBENTURE owners have been unable to freely dispose of their DEBENTURES in the manner represented to them, and have been deprived of the economic benefit of participating in the growth of INDIAN HEAD through the exercise of the conversion right, which was rendered economically meaningless by the acts of the defendants.

NINETY-SECOND: As a result of the foregoing, the DEBENTURE owners have been, since August 20, 1974, the economic captives of TBE and INDIAN HEAD, aided and abetted by the defendants.

NINETY-THIRD: Having failed to remedy the defaults under the INDENTURE, TBI's MERGER PLAN was a deliberate and willful attempt to further circumvent the redemption provisions of the INDENTURE and an attempt to purchase the DEBENTURES at less than the redemption price specified in the DEBENTURES.

NINETY-FOURTH: By not giving the DEBENTURE owners notice of the Tender Offers and of the prospective delisting

of the COMMON STOCK and DEBENTURES, defendants aided and abetted TBE:

A. To avoid paying approximately $17,500,000 it would have cost had all the DEBENTURES been tendered at the $27 a share tender price;

B. To depress the price and value of the DEBENTURES;

C. To hold the DEBENTURE Classes as economic captives, forcing retirement of the DEBENTURES at less than face or redemption value;

D. To use the assets and credit of INDIAN HEAD to squeeze out the DEBENTURES at depressed prices.

NINETY-FIFTH: TBI's Press Release, announcing the MERGER PLAN and its withdrawal, constitute manipulative and deceptive devices under Section 10b and Rule 10b-5 in that they omit to state the material facts hereinbefore alleged, which are necessary in order to make said Releases, in the light of the circumstances under which they were made, not misleading.

NINETY-SIXTH: By virtue of the foregoing, defendants have employed devices, schemes and artifices to defraud and engaged in acts and practices and a course of business which have operated and will operate as a fraud and deceit upon

plaintiffs and the DEBENTURE Classes all in violation of Section 10b and Rule 10b-5.

NINETY-SEVENTH: By virtue of the foregoing, INDIAN HEAD has been in default under the INDENTURE since September 27, 1973; the principal with accrued interest of each outstanding DEBENTURE has been due and payable since September 27, 1973; and defendants must be enjoined from making any purchases of DEBENTURES directly or indirectly.

NINTH CLAIM

NINETY-EIGHTH: This claim arises under Section 10b and Rule 10b-5.

NINETY-NINTH: INDIAN HEAD has been in default under the INDENTURE continuously since September 27, 1973, as hereinabove alleged.

ONE-HUNDREDTH: Section 13:01 of the INDENTURE prohibits a merger if INDIAN HEAD is in default, as follows:

> "The Company will not so consolidate or merge, or make any such sale or other disposition, or permit any corporation to merge into the Company, unless immediately after such consolidation, merger, sale or other disposition, the Company or such successor corporation, as the case may be, shall not be in default in the performance of any of the

covenants, agreements or conditions contained in this Indenture or in the Debentures."

[Emphasis supplied.]

ONE HUNDRED-FIRST: By virtue of the foregoing, any merger, consolidation or sale of assets constitutes a scheme and device to defraud which will operate as a fraud and deceit upon plaintiffs and the DEBENTURE Class in violation of Section 10b and Rule 10b-5.

ONE HUNDRED-SECOND: Any merger, consolidation or sale of assets must be enjoined and each owner paid the full amount of principal on each DEBENTURE with accrued interest.

TENTH CLAIM

ONE HUNDRED-THIRD: This claim arises under Section 10b and Rule 10b-5.

ONE HUNDRED-FOURTH: As fiduciary to the DEBENTURE Classes, MARINE should have promptly notified them of the possible delisting of the COMMON STOCK and DEBENTURES.

ONE HUNDRED-FIFTH: On or about September 27, 1973, MARINE knew or should have known that the New York Stock Exchange had indicated that the COMMON STOCK might ultimately be delisted, and that the DEBENTURES might also be ultimately delisted.

ONE HUNDRED-SIXTH: On or about July 12, 1974, MARINE knew or should have known that the COMMON STOCK and DEBENTURES might be delisted and should have promptly sent notice to the DEBENTURE Classes that upon completion of the Second Tender Offer, the COMMON STOCK and DEBENTURES would probably be delisted.

ONE HUNDRED-SEVENTH: Between September 27, 1973 and August 19, 1974, MARINE sent various communications and reports to the DEBENTURE Classes but failed to include therein or therewith notice of the prospective delisting.

ONE HUNDRED-EIGHTH: Defendant MARINE at all times knew of the prospective delistings and therefore breached its obligations under the INDENTURE and its fidicuary duty to the owners of the DEBENTURES in failing, on and after September 27, 1973, to declare such event of default and to accelerate payment of principal and accrued interest, as hereinbefore alleged, and by its failure to do so, aided and abetted the defendants' wrongful act.

ELEVENTH CLAIM

ONE HUNDRED-NINTH: This claim arises under Section 14(d) and 14(e) of the '34 ACT ("WILLIAMS ACT") and Section 10b and Rule 10b-5.

ONE HUNDRED-TENTH: The conversion privilege afforded the DEBENTURE Class an option to purchase the COMMON STOCK, so they were members of the COMMON STOCK Class within the meaning, purpose and intent of the WILLIAMS ACT.

ONE HUNDRED-ELEVENTH: The defendants, other than WHITE, WELD, CHEMICAL and KATZENBACH, in failing to send or cause to be sent to the DEBENTURE Classes notice of each Tender Offer, violated Section 14(d)(1) and (6) of the '34 ACT, as well as the INDENTURE.

ONE HUNDRED-TWELFTH: Between September 27, 1973 and August 19, 1974 INDIAN HEAD and TBE, aided and abetted by the other defendants, other than WHITE, WELD, CHEMICAL and KATZENBACH, failed to send or cause to be sent any notice to the DEBENTURE Classes about the material matters contained in the 1973 and 1974 Statutory Notices.

ONE HUNDRED-THIRTEENTH: The failure of said defendants to send or cause to be sent notice to the DEBENTURE Classes of the First and Second Tender Offers, or of the material matters therein,represented:

A. Fraudulent, deceptive and manipulative acts and practices in connection with a tender offer for the purchase and sale of a security; and,

B. A device, scheme and artifice to defraud and an act, practice or course of business which operated

as a fraud and deceit upon the DEBENTURE Classes in violation of Section 10b and Rule 10b-5.

ONE HUNDRED-FOURTEENTH: As a result of said violations:

A. The INDENTURE was breached, and events of default created which were never remedied;

B. The nature of the DEBENTURES was drastically and adversely altered;

C. The values of the DEBENTURES and of the COMMON STOCK into which they are convertible, were drastically reduced;

D. The marketability of the DEBENTURES and the COMMON STOCK was materially adversely affected; and,

E. TBE was enabled to constructively consolidate in breach of the Merger and conversion provisions of the INDENTURE.

ONE HUNDRED-FIFTEENTH: By reason of the foregoing, each member of the DEBENTURE Classes on or after September 27, 1973 is entitled to exercise his right of default under the INDENTURE and to be paid the principal amount of the DEBENTURES, with accrued interest less the net amount actually received from the sale of any DEBENTURES.

TWELFTH CLAIM

ONE HUNDRED-SIXTEENTH: This claim arises under the WARRANTS and WARRANT AGREEMENT.

ONE HUNDRED-SEVENTEENTH: The holders of WARRANTS are beneficiaries of the WARRANT AGREEMENT, entered into between CHEMICAL and INDIAN HEAD, which entitles them on the exercise thereof prior to their expiration to a share of COMMON STOCK or, upon certain events, other securities or property.

ONE HUNDRED-EIGHTEENTH: Paragraph 8(e) of the WARRANT AGREEMENT provides, in part, as follows:

> " . . . in case of the consolidation or merger of the Company [Indian Head] with or into any other corporation (other than a consolidation or merger in which the Company is the continuing corporation and which does not result in any change in the Warrant Common Stock), or of the sale of the properties and assets of the Company as, or substantially as an entirety to any other corporation, each Warrant shall after such capital reorganization, reclassification of capital stock, consolidation, merger or sale entitle the holder to purchase the kind and number of shares of stock or other securities or property of the Company, or of the corporation resulting from such consolidation or surviving such merger or to which such sale shall be made, as the case may be, to which such holder would have been entitled if he had held the Warrant Common Stock issuable upon the exercise of such Warrant immediately prior to such capital reorganization, reclassification of capital stock, consolidation, merger or sale."

ONE HUNDRED-NINETEENTH: The announced terms of the MERGER PLAN whereby holders of WARRANTS were to receive, upon the exercise of their WARRANTS, $30.00 cash constituted an anticipatory breach of the terms of the WARRANTS and WARRANT AGREEMENT in that the proposed merger was not an event permitting the substitution of $30.00 for a continuing interest in INDIAN HEAD because:

A. A "merger" contemplated by paragraph 8(e) of the WARRANT AGREEMENT is not a business combination in which one and the same persons control the merged and continuing corporation, but instead contemplates an arms-length transaction; and,

B. Pursuant to the MERGER PLAN, INDIAN HEAD was to be the "continuing corporation" as that phrase is used in paragraph 8(e) of the WARRANT AGREEMENT.

ONE HUNDRED TWENTIETH: The anticipatory breach of the WARRANT and WARRANT AGREEMENT has been made or induced by some or all of the defendants, and, as a consequence, the WARRANT holders suffered damages.

WHEREFORE, plaintiffs demand judgment against defendants as follows:

1. Temporarily and permanently enjoining

defendants, their officers, agents, servants, employees, attorneys and those persons acting in concert or in participation with them or each of them from:

A. directly or indirectly purchasing or causing to be purchased any SECURITIES of INDIAN HEAD;

B. selling or causing to be sold any authorized but unissued SECURITIES of INDIAN HEAD, or any SECURITIES owned directly or indirectly by them;

C. causing or permitting INDIAN HEAD or its business or assets to be directly or indirectly merged, consolidated with or otherwise acquired directly or indirectly by TBE, TBI or any company or entity, owned or controlled by them, or any of them or otherwise, without prior order of this Court;

D. directly or indirectly making or permitting TBE, TBI, TBH, INDIAN HEAD or any successor or assign of them or any of them, to make any offer, solicitation or other communication of any kind orally or written, whether by proxy solicitation, prospectus, notice, press release, advertisement, radio, television or other announcement, to the registered owners of SECURITIES relating directly or indirectly to a purchase, redemption, exchange, tender or other similar offer of any kind, without prior order of this Court;

E. directly or indirectly causing or permitting the use of INDIAN HEAD's business or assets in any manner or by any means in which the owners of SECURITIES of INDIAN HEAD do not participate, or otherwise, except in the ordinary course of business;

F. directly or indirectly conditioning, affecting or otherwise interfering with the orderly market for SECURITIES of INDIAN HEAD, except in the ordinary course of business;

G. making any announcement which might or could materially affect the market value or interests of the owners of SECURITIES without prior order of this Court.

2. Requiring the defendants to pay to all persons (a) who are record or beneficial owners of COMMON STOCK, WARRANTS or DEBENTURES, their aliquot shares and interests in the business and assets of INDIAN HEAD, to the same extent as they would be entitled to upon a dissolution and liquidation of INDIAN HEAD and giving effect to the value of their rights and interests unlawfully appropriated by the defendants.

3. Requiring the defendants to pay to all former record or beneficial owners of DEBENTURES who sold on or after September 27, 1973 and each who succeeded to their rights, the principal with accrued interest of each

DEBENTURE, less the net proceeds of any such sale, provided that said payments shall in no event be less than $1,033 and $100, plus interest, respectively.

4. Requiring the defendants to pay to all former record or beneficial owners of WARRANTS who sold on or after August 1, 1973 and each who succeeded to their rights, the purchase price of each WARRANT, less the net proceeds of any such sale.

5. That plaintiffs and each member of each Class be awarded such damages as may be just and proper.

6. That plaintiffs and the COMMON STOCK, DEBENTURE and WARRANT Classes be awarded such punitive damages as may be just and proper.

7. That the Court award reasonable counsel fees to the attorneys and counsel for plaintiffs, and reasonable expert fees for plaintiffs, and that no payments be made to the owners of SECURITIES until such award has been made and payment thereof arranged.

8. That each member of each Class be awarded interest under law.

9. That plaintiffs be awarded costs and disbursements incident to the prosecution of this action, together with all sums awarded, with interest, from

September 27, 1973.

10. That plaintiffs receive such other and further relief as may be proper and equitable in the premises.

Dated: New York, New York
July 2, 1976

Yours, etc.

AUSTRIAN, LANCE & STEWART, P.C.
Attorneys for Plaintiffs,
BRUCKER, KAPLAN, HUSKEY
and STRATTON, on behalf
of all Classes of Indian
Head Securities

By: William Klein II,
A Member of the Firm
Office and Post Office Address
630 Fifth Avenue
New York, New York 10020
Tel. No. (212) 489-9500

ORDER THAT ACTIONS SHALL BE MAINTAINED AS A CLASS ACTION
(Filed August 2, 1976)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK (pp. 148a- 157a)

RECEIVED
CHAMBERS OF
JUDGE STEWART

FILED

EDWARD BRUCKER and DANIEL R. KAPLAN, as Trustees under the Trust Agreement dated November 15, 1968, made by WILTRUD E. GADBOYS, as Grantor, CECIL G. HUSKEY, W. T. STRATTON and NORTE & CO., a partnership composed of JOSEPH C. GALDI and RITA D. GALDI,

Plaintiffs,

-against-

THYSSEN-BORNEMISZA EUROPE N.V., THYSSEN-BORNEMISZA, INC., THYSSEN-BORNEMISZA HOLDINGS, INC., MARINE MIDLAND BANK, INDIAN HEAD INC., JAMES G. FERGUSON, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALISTER, JOHN E. O'SULLIVAN, RICHARD J. POWERS, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, HERBERT E. BACHRACH, GERARD B. HUISKAMP, WHITE, WELD & CO. INCORPORATED, L. EMERY KATZENBACH, H. H. THYSSEN-BORNEMISZA, R. L. GENILLARD and CHEMICAL BANK,

Defendants.

74 Civ. 5755 (CES)

U.S. DISTRICT COURT
AUG 0 2 1976
S.D. OF N.Y.

ORDER

WILLIAM B. WEINBERGER,

Plaintiff,

-against-

RICHARD J. POWERS, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALISTER, JOHN E. O'SULLIVAN, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, JAMES G. FERGUSON, THYSSEN-BORNEMISZA, INC. and INDIAN HEAD INC.,

Defendants.

75 Civ. 229 (CES)

SHAMROCK CORPORATION, individually, and on behalf of all holders of Common Stock and Warrants of Indian Head Inc., similarly situated,

Plaintiffs,

-against-

INDIAN HEAD INC.; THYSSEN-BORNEMISZA GROUP N.V.; THYSSEN-BORNEMISZA, INC.; WHITE, WELD & CO. INCORPORATED; RICHARD J. POWERS; JAMES E. ROBISON, HERBERT E. BACHRACH; GERARD B. HUISKAMP; L. EMERY KATZENBACH; MARSHALL F. SMITH; H. H. THYSSEN-BORNEMISZA; R.L. GENILLARD; THYSSEN-BORNEMISZA HOLDINGS, INC. and CHEMICAL BANK,

Defendants.

75 Civ. 1736 (CES)

61 76-7578

Upon the Affidavit of William Klein II, sworn to on the 20th day of July, 1976, and upon the Stipulation and Agreement of Settlement dated July 20, 1976 as amended by the Amendment to Stipulation and Agreement of Settlement dated July 28, 1976 ("Agreement"), annexed hereto, which has been executed by counsel for the parties in the above-captioned actions, and upon the consent of counsel for the parties in the above-captioned actions, and upon all of the prior proceedings herein;

NOW, THEREFORE, it is hereby

ORDERED, that the above-captioned actions shall be maintained as class actions, for purposes of settlement only, on behalf of the following classes:

(i) Common Stock Class. All owners, beneficially or of record, of $1.00 par value common stock ("Common Stock") of Indian Head as of the date this Order is entered who continue to own such Common Stock on the date of the merger (the "Merger Date") to be effected as provided in the annexed Agreement;

(ii) Debenture Owner Class. All owners, beneficially or of record, of 5-1/2% Convertible Subordinated Debentures due April 15, 1993 of Indian Head ("Debentures") as of the date this Order is entered who continue to own such Debentures on the Merger Date;

(iii) Debenture Seller Classes. Former owners, beneficially or of record, of Debentures, as follows:

Debenture Seller Class A. All such owners on September 27, 1973 who sold such Debentures between September 27, 1973 and July 1, 1974, inclusive;

Debenture Seller Class B. All such owners on July 2, 1974 who sold such Debentures between July 12, 1974 and the date this Order is entered, inclusive;

(iv) Warrant Owner Classes. Owners, beneficially or of record, of warrants issued pursuant to the Warrant Agreement dated as of May 15, 1965 between Indian Head and Chemical Bank ("Warrants"), as follows:

Warrant Owner Class A. All such owners as of the date this Order is entered who continue to own such Warrants on the Merger Date;

Warrant Owner Class B. All members of Warrant Owner Class A who were owners of Warrants on July 2, 1974;

(v) Warrant Seller Classes. Former owners, beneficially or of record, of Warrants, as follows:

Warrant Seller Class A. All such owners on July 2, 1974 who sold such Warrants between July 12, 1974 and the date this Order is entered, inclusive;

Warrant Seller Class B. All such owners who sold such warrants between August 1, 1973 and July 1, 1974, inclusive; and it is further

ORDERED, that Edward Brucker and Daniel R. Kaplan are designated as representatives of all the foregoing classes; that William B. Weinberger is designated as representative of the Debenture Owner Class and Debenture Seller Classes; Cecil G. Huskey, W. T. Stratton and Shamrock Corporation are designated as representatives of the Warrant Owner Classes and Warrant Seller Classes; and that Norte & Co., a partnership composed of Joseph C. Galdi and Rita D. Galdi, is designated as representative of the Common Stock Class; and it is further

ORDERED, that Austrian, Lance & Stewart, P.C. is designated lead counsel for all classes designated herein, Weinstein & Levinson is designated co-counsel for the Debenture Owner Class and Debenture Seller Classes designated herein and Wolf, Haldenstein, Adler, Freeman, Herz & Frank as co-counsel for the Warrant Owner Classes and Warrant Seller Classes designated herein; and it is further

ORDERED, that a hearing shall be held on the 13th day of October, 1976, at 4:00 P.M ~~10:00 o'clock in the forenoon of that day~~ in Room 2703 in the United States Courthouse, Foley Square, New York, New York 10007, and continuing thereafter on such adjourned date or dates as the Court may direct, to determine whether the terms of the annexed Agreement, and the merger therein provided, are fair, reasonable and adequate, whether they should be approved by the Court and to schedule a subsequent hearing to be held without further notice to determine whether the fees and allowances as may be applied for by plaintiffs' counsel in the above-captioned actions should be approved; and it is further

ORDERED, that within ten (10) business days after entry of this Order, Thyssen-Bornemisza, Inc. ("TBI") shall mail or cause to be mailed, at its expense, by United States mail, postage prepaid, to each and every member of the classes designated above whose name and address appears on the records of Indian Head, at such address, a Notice of Settlement Hearing ("Notice") substantially in the form of Exhibit "B" to the annexed Agreement, and in the case of each and every member of the Debenture Seller Classes and the Warrant Seller Class A, TBI shall, in addition, mail or cause to be mailed to each Proofs of Claim substantially in the form of Exhibit "C" to the annexed Agreement, and that within five (5) days after such mailings TBI shall cause to be filed with the Clerk of the Court an affidavit showing that such mailings have been made as directed herein; and it is further

ORDERED, that TBI shall cause to be published at its expense the Notice substantially in the form of Exhibit "B" in The New York Times and The Wall Street Journal (Eastern, Midwest, Southwest and Pacific Coast editions) in columns no smaller than one-eighth of a page on one (1) business day in each of two (2) successive weeks commencing within ten (10) business days after the date of this Order, and further requiring that within five (5) days after the last of such publications TBI shall cause to be filed with the Clerk of the Court an affidavit of such publication; and it is further

ORDERED, that all brokerage firms and other financial institutions which are or were or whose nominees

are or were the record owners of Common Stock, Debentures or Warrants, shall transmit any Notices received to all persons who by their records are shown to be beneficial owners or former owners of Common Stock, Debentures or Warrants who are members of any class designated herein and any Proofs of Claim received to all such former beneficial owners who are members of the Debenture Seller Classes or Warrant Seller Class A designated herein, shall request such additional Notices and Proofs of Claim as are necessary to comply with this Order, and shall be reimbursed by TBI, upon written request, for the reasonable and necessary expenses of complying with this Order; and it is further

ORDERED, that the foregoing methods of notice are the best practicable under the circumstances and that the form of Notice in Exhibit "B" fully and fairly describes the terms of the settlement and merger provided for in the annexed Agreement; and it is further

ORDERED, that plaintiffs shall, with the cooperation of the Clerk of the Court, lease a numbered post office box of adequate size in the City of New York, in the name of the Clerk of the Court, for the purpose of receiving Proofs of Claim, requests for exclusion and any other communications from class members, and that all notices to class members shall bear the designation of said post office box as the return address; and it is further

ORDERED, that in order to assert a claim to the settlement funds provided for in the annexed Agreement, a member of the Debenture Seller Classes or the Warrant Seller Class A must mail to the Clerk of

the Court, at the post office box provided for herein, a Proof of Claim by November 24, 1976, and that failure to mail a Proof of Claim by such date shall terminate any rights which he may have to participate in the distribution of the settlement funds provided for in the annexed Agreement and to assert any claim against any of the defendants arising from or relating to the subject matter of any of the pleadings in the above-captioned actions, unless he has filed a written request for exclusion, as provided herein, from the class of which he would otherwise be a member; and it is further

ORDERED, that plaintiffs shall deliver to Shearman & Sterling, attorneys for certain defendants, (1) copies of communications received at the post office box provided for herein or by plaintiffs' counsel from members of the class within three (3) days of any request therefor, and (2) promptly, copies of replies to any inquiries or communications regarding the Notice; and it is further

ORDERED, that any person who desires to be excluded from any class shall mail to the Clerk of the Court, at the post office box provided for herein, a written request for exclusion, postmarked not later than fifteen (15) days prior to the hearing set herein, stating

(i) His or her name, address and telephone number;

(ii) The number of shares of Common Stock, principal amount of Debentures and number of Warrants he or she purchased and sold; and

(iii) The number of shares of common Stock, principal amount of Debentures and number of Warrants he or she continues to own; and

that any person who so mails such a written request for exclusion shall not share in the benefits of the settlement and will not be bound by any judgment entered thereon and that failure to submit a written request for exclusion by the prescribed date will result in such class member's being bound by the terms of any judgment or order in the above-captioned actions, including a judgment approving the settlement and the merger as provided in the annexed Agreement; and it is further

ORDERED, that no person, other than a class member who does not request exclusion in the manner provided for above, may object to the approval of the settlement provided for in the annexed Agreement, and that any class member who objects to the approval of the settlement provided for in the annexed Agreement may appear at the hearing personally or through counsel of his or her choice and show cause, if any he or she has, why the settlement and merger proposed in the annexed Agreement should not be approved as fair, reasonable and adequate, and why a judgment should not be entered thereon, provided, however, that no such class member will be heard, and no brief or other papers, if any, will be received or considered by the Court, except as the Court may in its discretion direct,

unless a notice of intention to appear and a statement of the position to be asserted and the grounds therefor, together with satisfactory proof of class membership, and any briefs or other papers which such class member may choose to submit, are filed with the Clerk of the Court and served upon Austrian, Lance & Stewart, P.C., 630 Fifth Avenue, Rockefeller Center, New York, N.Y. 10020, and upon Shearman & Sterling, 53 Wall Street, New York, N.Y. 10005, not later than fifteen (15) days prior to the hearing set herein; and it is further

ORDERED, that no class member shall be entitled in any way to contest the approval of the settlement and merger provided for in the annexed Agreement unless he or she has served and filed the papers specified above, and that any class member who fails to object in the manner prescribed shall be deemed to have waived, and shall be foreclosed forever from raising, any objections; and it is further

ORDERED, that the institution, maintenance, or prosecution of any and all actions, suits, claims, arbitrations or any other proceedings by any person arising out of or relating to the subject matter of any of the pleadings in the above-captioned actions, the terms of the annexed Agreement or the merger provided for therein shall be stayed and enjoined in any court other than before the Honorable Charles E. Stewart, Jr. of the United States District Court for the Southern District of New York, pending entry of a judgment and order determining whether the settlement and merger as

provided for in the annexed Agreement are fair, reasonable and adequate; and it is further

ORDERED, that the Court hereby retains jurisdiction to alter or amend this Order pursuant to Rule 23 of the Federal Rules of Civil Procedure.

Dated: New York, New York
~~July~~ Aug 29, 1976

Charles E. Stewart J
U.S.D.J.

STIPULATION AND AGREEMENT OF SETTLEMENT ANNEXED TO FOREGOING ORDER

(Omitted here but printed at page 160a)

AMENDMENT TO STIPULATION AND AGREEMENT OF SETTLEMENT
ANNEXED TO FOREGOING ORDER

(Omitted here but printed at page 186a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

EDWARD BRUCKER and DANIEL R. KAPLAN, as Trustees under the Trust Agreement dated November 15, 1968, made by WILTRUD E. GADBOYS, as Grantor, CECIL G. HUSKEY, W. T. STRATTON and NORTE & CO., a partnership composed of JOSEPH C. GALDI and RITA D. GALDI,

Plaintiffs,

-against-

THYSSEN-BORNEMISZA EUROPE N.V., THYSSEN-BORNEMISZA, INC., THYSSEN-BORNEMISZA HOLDINGS, INC., MARINE MIDLAND BANK, INDIAN HEAD INC., JAMES G. FERGUSON, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALISTER, JOHN E. O'SULLIVAN, RICHARD J. POWERS, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, HERBERT E. BACHRACH, GERARD B. HUISKAMP, WHITE, WELD & CO. INCORPORATED, L. EMERY KATZENBACH, H. H. THYSSEN-BORNEMISZA, R. L. GENILLARD and CHEMICAL BANK,

Defendants.

----------x

FILE:

74 Civ. 5755 (CES)

U.S. DISTRICT COURT
FILED
JUL 20 1976
S. D. OF N.Y.

STIPULATION AND AGREEMENT OF SETTLEMENT

WILLIAM B. WEINBERGER,

Plaintiff,

~~75 Civ. 229 (CES)~~

-against-

RICHARD J. POWERS, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALISTER, JOHN E. O'SULLIVAN, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, JAMES G. FERGUSON, THYSSEN-BORNEMISZA, INC. and INDIAN HEAD INC.,

Defendants.

WHEREAS, plaintiffs in the above-captioned actions have asserted claims against the named defendants on behalf of alleged classes of security holders of defendant Indian Head Inc. ("Indian Head") and, derivatively, on behalf of Indian Head, based upon alleged

violations of the Securities Exchange Act of 1934 and the Rules promulgated thereunder, and under State law, arising from the alleged acquisition of control of Indian Head by defendant Thyssen-Bornemisza Europe N.V. ("TBE") and its wholly-owned subsidiary, defendant Thyssen-Bornemisza, Inc. ("TBI"), through the making of tender offers for Indian Head common stock and warrants, pursuant to which TBI acquired 90.6% of Indian Head common stock; the alleged failure by TBE and TBI to give notice of such tender offers to the Indian Head convertible debenture holders; and the alleged use of such alleged control to propose a merger asserted to be unfair to the Indian Head security holders, all as more specifically set forth in the complaints or amended complaints therein; and

WHEREAS, each of the defendants, while denying any wrongdoing or liability, desires to settle this litigation in the manner and upon the terms stated herein, in order to avoid the further expense, inconvenience and distraction of burdensome and protracted litigation, and to put to rest all controversy concerning all claims which have been asserted or might have been asserted, including all possible derivative claims, based upon the acts and transactions referred to in the pleadings; and

WHEREAS, plaintiffs' attorneys and experts have made an intensive investigation of the ten-year documentary record underlying the transactions involved in the above-captioned actions, and of the financial,

economic and market aspects thereof; and

WHEREAS, plaintiffs and their attorneys, having considered the likelihood that this litigation, if not settled now, will be protracted and extensive and will involve many sharply contested questions, not only of legal liability, but of damages, and the risks and costs attending further prosecution of this litigation, have concluded that it will be in the best interests of plaintiffs and of the classes they claim to represent to settle these actions as herein provided; and

WHEREAS, defendant TBI has agreed, upon terms and conditions more fully set forth herein, (i) to effectuate a merger of Indian Head into Thyssen-Bornemisza Holdings, Inc., a corporation to be incorporated under Delaware law (the "Merger"), and (ii) to pay to each owner of Common Stock, as herein defined, $32.00 for each such share; to pay to each owner of Debentures, as herein defined, $844.16 for each Debenture; to pay to each former owner of Debentures (a) who sold between September 27, 1973 and July 1, 1974 the amount by which $650.00 exceeds the selling price (but not more than $50.00), and (b) who owned on July 2, 1974 and sold between July 12, 1974 and the date of entry of the order referred to in paragraph 1 hereof, the amount by which $701.00 exceeds the selling price (but not more than $100.00); to pay to each owner of Warrants, as herein defined, $2.50 for each Warrant; to pay to each owner of Warrants who owned such Warrants on July 2, 1974, $4.00 for each Warrant; and to pay to each former owner

of Warrants who owned such Warrants on July 2, 1974 and sold between July 12, 1974 and the date of entry of the order referred to in paragraph 1 hereof, $1.50 for each Warrant;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, subject to the approval of this Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, that all of the claims in the above-captioned actions and all possible claims which might be based upon the acts and transactions referred to therein, including all derivative claims, shall be settled, compromised and terminated upon the terms and conditions hereinafter set forth.

FILING OF AGREEMENT AND APPLICATION FOR ORDER DESIGNATING CLASSES AND SCHEDULING HEARING ON NOTICE

1. Promptly after the execution of this Stipulation and Agreement of Settlement ("Agreement"), plaintiffs shall submit this Agreement to the Court for approval of the compromise and settlement, including the Merger, provided for herein and for the entry of a judgment and order dismissing the above-captioned actions against all named defendants, and shall move, on consent of the defendants, for an order (in substantial conformity with the proposed order annexed hereto as Exhibit "A"):

(a) Providing that the above-captioned actions shall be maintained as class actions, for purposes of settlement only, on behalf of the following classes:

(i) Common Stock Class. All owners, beneficially or of record, of $1.00 par value common stock ("Common Stock") of Indian Head as of the date such order is entered who continue to own such Common Stock on the date of the merger (the "Merger Date") to be effected as provided in this Agreement;

(ii) Debenture Owner Class. All owners, beneficially or of record, of 5-1/2% convertible subordinated debentures due April 15, 1993 of Indian Head ("Debentures") as of the date such order is entered who continue to own such Debentures on the Merger Date;

(iii) Debenture Seller Classes. Former owners, beneficially or of record, of Debentures, as follows:

Debenture Seller Class A. All such owners on September 27, 1973 who sold such Debentures between September 27, 1973 and July 1, 1974, inclusive;

Debenture Seller Class B. All such owners on July 2, 1974 who sold such Debentures between July 12, 1974 and the date such order is entered, inclusive;

(iv) Warrant Owner Classes. Owners, beneficially or of record, of warrants issued pursuant to the Warrant Agreement dated as

of May 15, 1965 between Indian Head and Chemical Bank ("Warrants"), as follows:

Warrant Owner Class A. All such owners as of the date such order is entered who continue to own such Warrants on the Merger Date;

Warrant Owner Class B. All members of Warrant Owner Class A who were owners of such Warrants on July 2, 1974;

(v) Warrant Seller Classes. Former owners, beneficially or of record, of Warrants, as follows:

Warrant Seller Class A. All such owners on July 2, 1974 who sold such Warrants between July 12, 1974 and the date such order is entered, inclusive;

Warrant Seller Class B. All such owners who sold such warrants between August 1, 1973 and July 1, 1974, inclusive;

(b) Appointing the following class representatives: Edward Brucker and Daniel R. Kaplan as representatives of all the foregoing classes; William B. Weinberger as representative of the Debenture Owner Class and Debenture Seller Classes; Cecil G. Huskey and W. T. Stratton as representatives of the Warrant Owner Classes and Warrant Seller Classes; and Norte & Co., a partnership composed of Joseph C. Galdi and Rita D.

Galdi, as representative of the Common Stock Class;

(c) Designating Austrian, Lance & Stewart, P.C. as lead counsel for all classes designated therein, and Weinstein & Levinson as co-counsel for the Debenture Owner Class and Debenture Seller Classes designated therein;

(d) Scheduling a hearing to be held approximately sixty (60) days after the date of entry of such order to determine the fairness, reasonableness and adequacy of the compromise and settlement and Merger provided for in this Agreement and whether a judgment and order should be entered as provided herein;

(e) Requiring that within ten (10) business days after entry of such order, TBI shall mail or cause to be mailed, at its expense, by United States mail, postage prepaid, to each and every member of the classes designated in subparagraph (a) above whose name and address appears on the records of Indian Head, to such address, a Notice of Settlement Hearing ("Notice") substantially in the form of Exhibit "B" attached hereto, and in the case of each and every such member of the Debenture Seller Classes and Warrant Seller Class A, TBI shall, in addition, mail or cause to be mailed Proofs of Claim substantially in the form of Exhibit "C" attached hereto, and further requiring that within five (5) days after such mailings TBI shall cause to be filed with the Clerk of the Court an affidavit showing that such mailings have been made as directed by such order;

(f) Requiring that TBI shall cause to be published at its expense the Notice substantially in the form of attached Exhibit "B" in The New York Times and The Wall Street Journal (Eastern, Midwest, Southwest and Pacific Coast editions) in columns no smaller than one-eighth of a page on one (1) business day in each of two (2) successive weeks commencing within ten (10) business days after the date of such order, and further requiring that within five (5) days after the last of such publications TBI shall cause to be filed with the Clerk of the Court an affidavit of such publication;

(g) Requiring that all brokerage firms and other financial institutions which are or were or whose nominees are or were the record owners of Common Stock, Debentures or Warrants and which would be a member of any class provided for herein, shall transmit any documents received pursuant to subparagraph 1(e) hereof to all beneficial owners of such Common Stock, Debentures or Warrants and shall request such additional copies of the documents as are necessary to comply with such order;

(h) Finding that the foregoing methods of notice are the best practicable under the circumstances and that the form of Notice in Exhibit "B" fully and fairly describes the terms of the settlement and Merger provided for in this Agreement;

(i) Directing that plaintiffs shall, with the cooperation of the Clerk of the Court, lease numbered post office box of adequate size in the [illegible]y

of New York, in the name of the Clerk of the Court, for the purpose of receiving Proofs of Claim, requests for exclusion and any other communications from class members, and that all communications to class members shall bear the designation of said post office box as the return address;

(j) Directing that in order to assert a claim to the settlement funds provided for herein, a member of the Debenture Seller Classes or the Warrant Seller Class A must mail to or file with the Clerk of the Court a Proof of Claim by such date as is designated in such order, and that failure to mail or file a Proof of Claim by such date shall terminate any rights which he may have to participate in the distribution of the settlement funds provided for herein and to assert any claim against any of the defendants arising from or relating to the subject matter of any of the pleadings in the above-captioned actions, unless he has filed a written request for exclusion, as provided in such order, from the class of which he would otherwise be a member;

(k) Providing that plaintiffs shall deliver to Shearman & Sterling, attorneys for certain defendants, (1) copies of communications received at the post office box or by plaintiffs' counsel from members of the class within three (3) days of any request therefor, and (2) promptly, copies of replies to any inquiries or communications regarding the Notice;

(l) Requiring that any person who desires to be excluded from any class shall mail to the Clerk

of the Court, at the post office box provided for in such order, a written request for exclusion, postmarked no later than fifteen (15) days prior to the hearing set by such order, stating

(i) His name, address and telephone number;

(ii) The number of shares of Common Stock, principal amount of Debentures and number of Warrants he purchased and sold, the date(s) of such purchase(s) and sale(s), the sales price per share, per $1,000 principal amount of Debentures or per Warrant; and

(iii) The number of shares of Common Stock, principal amount of Debentures and number of Warrants he continues to own; and

providing that any person who so mails such a written request for exclusion shall not share in the benefits of the settlement and will not be bound by any judgment or order entered thereon. Failure to submit a written request for exclusion by the prescribed date will result in such class member being bound by the terms of any judgment or order in the above-captioned actions, including a judgment or order approving the settlement and the Merger as herein provided;

(m) Providing that no person, other than a class member who does not request exclusion in the manner provided for above, may object to the approval of the settlement provided for in this Agreement, and that any such class member who objects to the approval of the

settlement provided for in this Agreement may appear at the hearing through counsel of his choice and show cause, if any he has, why the settlement and Merger proposed in this Agreement should not be approved as fair, reasonable and adequate, and why a judgment and order should not be entered thereon, provided, however, that no such class member will be heard and no brief or other papers will be received or considered by the Court, except as the Court may in its discretion direct, unless a notice of intention to appear and a statement of the position to be asserted and the grounds therefor, together with satisfactory proof of class membership, and any briefs or other papers to be submitted, are filed with the Clerk of the Court and served upon Austrian, Lance & Stewart, P.C., 630 Fifth Avenue, Rockefeller Center, New York, N. Y. 10020, and upon Shearman & Sterling, 53 Wall Street, New York, N. Y. 10005, not later than fifteen (15) days prior to the hearing set by such order;

(n) Providing that no class member shall be entitled in any way to contest the approval of the settlement and Merger provided for in this Agreement unless he has served and filed the papers specified in subparagraph (m) above, and that any class member who fails to object in the manner prescribed shall be deemed to have waived, and shall be foreclosed forever from raising, any objections; and

(o) Providing that the institution, maintenance, or prosecution of any and all actions, suits,

claims, arbitrations or any other proceedings by any person arising out of or relating to the subject matter of any of the pleadings in the above-captioned actions, the terms of this Agreement or the Merger provided for herein shall be stayed and enjoined in any court other than before the Honorable Charles E. Stewart, Jr. of the United States District Court for the Southern District of New York pending entry of a judgment and order determining whether the settlement and Merger as provided for in this Agreement are fair, reasonable and adequate.

SETTLEMENT OF CLAIMS

2. In full and final satisfaction and discharge of all claims which have been, or might have been, asserted arising out of or relating to the matters set forth in the complaints or amended complaints herein against each of the defendants, whether or not served with a summons and complaint:

(a) Within two (2) days after the Merger Date, TBI shall deliver the sum of $12,100,000, and such additional sums as may become necessary to effectuate the terms of this Agreement (the "Debenture Settlement Fund") to Marine Midland Bank ("Marine") and the sum of $1,450,000, and such additional sums as may become necessary to effectuate the terms of this Agreement (the "Warrant Settlement Fund") to Chemical Bank ("Chemical"), to receive and hold in escrow, invest and ultimately deliver out of escrow, in accordance with the terms and conditions

of a Debenture Escrow Agreement and a Warrant Escrow Agreement, respectively, each of which shall contain the provisions as specified in paragraph 4 hereof, and, subject to Court approval, TBI shall also deliver to Chemical a sum not in excess of $550,000 for any award(s) by the Court for attorneys' fees and expenses in accordance with paragraph 5(a) hereof (the "Fee Fund") pursuant to a Fee Escrow Agreement among Chemical, Austrian, Lance & Stewart, P.C., Weinstein & Levinson and Shearman & Sterling; and

(b) On the Effective Date, as defined in paragraph 7(a) hereof, or as soon thereafter as is practicable, TBI shall cause Indian Head to be merged into Thyssen-Bornemisza Holdings, Inc. by filing with the Secretary of State of Delaware pursuant to Section 253 of the Delaware Corporation Law a Certificate of Ownership and Merger (the "Merger Certificate") substantially in the form of Exhibit "D" annexed hereto, paying $32.00 for each share of Common Stock of Indian Head issued and outstanding on the Merger Date to holders of Common Stock presenting certificates therefor in accordance with the Merger Certificate.

3. Delivery by TBI of the Debenture Settlement Fund to Marine and the Warrant Settlement Fund and Fee Fund to Chemical, respectively, and payment by TBI to

the holders of Common Stock in accordance with the Merger Certificate shall constitute the total obligation and contribution of all defendants, whether or not served with a summons and complaint, in connection with the settlement of the above-captioned actions, and neither plaintiffs nor any class member nor attorneys for any of them shall be entitled to collect directly or indirectly any additional amount from the defendants or require any further acts of defendants or their counsel, except that plaintiffs may require Shearman & Sterling to give the written advice as provided in paragraph 4(h) hereof.

4. The Debenture Escrow Agreement, Warrant Escrow Agreement and Fee Escrow Agreement will include the following provisions:

(a) The Debenture Escrow Agreement will provide that upon there being no objection to Proofs of Claim and Transmittal Letters in accordance with paragraph 6(f)(iii) hereof, Marine will pay out of the Debenture Settlement Fund as provided in paragraph 6(f)(iv) hereof, to those of the following whose claims are accepted:

(i) To each member of the Debenture Owner Class, $844.16 per Debenture in exchange for each such Debenture;

(ii) To each member of Debenture Seller Class A, the amount by which $650.00 exceeds the selling price for each Debenture sold, but not more than $50.00 for each such

Debenture;

(iii) To each member of Debenture Seller Class B, the amount by which $701.00 exceeds the selling price for each Debenture sold, but not more than $100.00 for each such Debenture;

(b) The Warrant Escrow Agreement will provide that upon there being no objection to Proofs of Claim and Transmittal Letters in accordance with paragraph 6(f)(iii) hereof, Chemical will pay out of the Debenture Settlement Fund as provided in paragraph 6(f)(iv) hereof, to those of the following whose claims are accepted:

(i) To each member of Warrant Owner Class A, $2.50 per Warrant in exchange for each such Warrant;

(ii) To each member of Warrant Owner Class B, $4.00 per Warrant in exchange for each such Warrant;

(iii) To each member of Warrant Seller Class A, $1.50 for each such Warrant sold;

(c) The Fee Escrow Agreement will provide that upon delivery of a copy of an order of the court awarding counsel fees and expenses Chemical will forthwith, out of the Fee Fund, make the payment(s) as provided in such order;

(d) Upon receipt of the sums paid by TBI into the Debenture Settlement Fund and Warrant Settlement Fund, and pending distribution thereof, Marine and

Chemical, respectively, will invest such funds and the remaining balances thereof together with any additions thereto resulting from interest thereon so as to realize the highest possible interest consistent with the need for short-term liquidity required by the terms of the Debenture Escrow Agreement and Warrant Escrow Agreement;

(e) All interest upon the Debenture Settlement Fund and Warrant Settlement Fund, and any balance remaining in escrow after March 1, 1977, except such sums as shall continue to be held in escrow pursuant to subparagraph 4(h) hereof, shall be paid to TBI;

(f) All certificates for Debentures and Warrants received by Marine and Chemical shall be delivered to TBI;

(g) In the event that this Agreement does not become or remain effective as provided in paragraph 7 hereof, then Marine and Chemical will deliver to TBI all cash then held in escrow and all certificates for Debentures and Warrants then held, and the Escrow Agreements will be terminated;

(h) In the event that any person entitled to receive payment under subparagraphs (a) or (b) shall file or participate in the filing of an appeal or seek or obtain or participate in seeking or obtaining an extension of time to appeal from the judgment and order to be entered as provided in paragraph 6 hereof or engage in any action, suit or proceeding challenging such judgment and order, then Shearman & Sterling shall advise

Marine and Chemical in writing of the identity of any such person and, upon receiving such written advice, Marine and Chemical shall withhold payment to any such person until receipt of written advice from Shearman & Sterling that such appeal, extension of time to appeal, action, suit or proceeding has been finally withdrawn or decided in favor of such judgment and order, or that such person is no longer participating therein, at which time payment shall be made to such person or persons in the amount of such claim or claims as have been accepted together with interest earned thereon from the date such payment was withheld.

FEES AND EXPENSES

5. (a) Plaintiffs' Attorneys and Experts. Subject to a judgment of the Court being entered approving the settlement and Merger provided for in this Agreement, plaintiffs' attorneys in the above-captioned actions will apply to the Court for an allowance of fees and reimbursement of expenses for themselves, and for the fees and expenses of any experts retained by them in connection with the litigation. The defendants agree that they will not oppose any such applications. TBI agrees, subject to the approval of the Court, that it will pay into the Fee Fund the aggregate amount of any award(s) by the Court, not in excess of $550,000, for such fees and expenses. Plaintiffs' attorneys agree to accept payment of such awards, not exceeding an aggregate amount of $550,000, in full and final satisfaction of their respective applications and claims

for fees and expenses by them or their experts in connection with this litigation and they will not make any claim for fees and expenses against any Settlement Fund or against any defendant except for the amounts so awarded by the Court and paid into the Fee Fund by TBI.

(b) Other Fees and Expenses. TBI shall pay the expenses of (1) giving all notices provided herein; (2) administering the Escrow Agreements; (3) the fees and expenses of Marine and Chemical for services rendered hereunder; and (4) all other fees and expenses incurred by it in connection herewith.

APPROVAL OF THE SETTLEMENT

6. If the compromise and settlement, including the Merger, provided for in this Agreement is approved by the Court, a judgment and order shall be entered in the above-captioned actions:

(a) Certifying the above-captioned actions as class actions, and the members of the classes shall be those members of the classes defined in paragraph 1(a) hereof except those who have requested exclusion from any such class;

(b) Approving the settlement and the Merger provided for herein and finding them to be fair, reasonable and adequate, dismissing with prejudice the above-captioned actions and all claims asserted or which might have been asserted therein on the merits as to all named defendants in the above-captioned actions, whether or not served with a summons and complaint, and

reserving jurisdiction over the consummation of the terms of this Agreement;

(c) Providing that within ten (10) business days after the Merger Date, TBI shall cause to be mailed at its expense, by United States mail, postage prepaid, to each and every member of the Debenture Owner Class and Warrant Owner Classes Transmittal Letters substantially in the form of Exhibit "E" annexed hereto;

(d) Requiring that all brokerage firms and financial institutions which are or were or whose nominees are or were the record owners of Common Stock, Debentures or Warrants and which would be a member of the Common Stock Class, Debenture Owner Class or a Warrant Owner Class shall transmit any Transmittal Letters received to all such beneficial owners of such Common Stock, Debentures or Warrants who would be members of such classes and shall request such additional Transmittal Letters as are necessary to comply with such order;

(e) Providing that in order to assert a claim to the Debenture Settlement Fund or Warrant Settlement Fund, respectively, provided for herein, a member of the Debenture Owner Class or of a Warrant Owner Class shall mail to or file with the Clerk of the Court a Transmittal Letter with all attachments required thereby in the manner provided for therein within 60 days after the Merger Date;

(f) Appointing Marine and Chemical to review all Proofs of Claim and Transmittal Letters (together

with all documents required thereby) submitted by all members of the Debenture Owner Class and Debenture Seller Classes and by all members of the Warrant Owner Classes and Warrant Seller Classes, respectively, and providing

(i) That Marine and Chemical shall, within 30 days after the date set by the court as provided in subparagraph 6(e) above, or such further time as the court may allow, give written notice to Shearman & Sterling and to Austrian, Lance & Stewart, P.C. as to (A) which Proofs of Claim and Transmittal Letters they accept for purposes of payment hereunder and the amount of such payment, (B) which Proofs of Claim and Transmittal Letters, accepted for payment, have been submitted by persons who, according to written advice from Shearman & Sterling, have filed or are participating in an appeal or have sought or obtained or are participating in seeking or obtaining an extension of time to appeal from the judgment and order to be entered as provided by this paragraph or are engaged in any action, suit or proceeding challenging such judgment and order and (C) which Proofs of Claim and Transmittal Letters they do not accept for payment and the reasons therefor;

(ii) That Marine and Chemical shall make available continuously as received all Proofs of Claim and Transmittal Letters to Shearman

& Sterling and Austrian, Lance & Stewart, P.C., for their inspection, and shall fully cooperate with both firms in any inquiries they may make;

(iii) That within thirty (30) days after receipt of notice pursuant to subparagraph (i) above, Shearman & Sterling and Austrian, Lance & Stewart, P.C., shall confer with Marine and Chemical and with each other in an attempt to resolve any dispute that may arise concerning such Proofs of Claim or Transmittal Letters and, in the event that such dispute cannot be so resolved within such thirty (30) day period, the objecting party shall submit such objection to the Court for resolution;

(iv) As to all Proofs of Claim and Transmittal Letters to which no objection is made in the manner provided above, within ten (10) days after the conference referred to in subparagraph (iii) above, but in any event not longer than forty (40) days after the date of notice pursuant to subparagraph (i) above, Marine and Chemical shall make payment in accordance with the provisions of the Debenture Escrow Agreement and Warrant Escrow Agreement, respectively, to all class members whose Proofs of Claim and/or Transmittal Letters are accepted for payment and shall withhold payment to any and all persons described in subparagraph 4(h) hereof until they receive written advice

pursuant to subparagraph 4(h) hereof from Shearman & Sterling, and shall, from time to time, promptly make payment to such persons whose Proofs of Claim and/or Transmittal Letters Shearman & Sterling and Austrian, Lance & Stewart, P.C., shall advise are no longer the subject of dispute or as to which an order of the Court resolving such a dispute has been entered;

(g) Permanently enjoining all plaintiffs and class members and their heirs, executors, administrators, personal representatives, successors and assigns from prosecuting any individual, class or derivative claims arising out of or relating to the matters set forth in the complaints, including any claim related to consummation of the Merger, other than a proceeding for appraisal pursuant to section 262 of the Delaware Corporation Law, against any of the defendants whether or not served with a summons and complaint, their personal representatives, trustees, heirs and assigns and, as to the corporate defendants, in addition, their predecessors, successors, parents, subsidiaries, affiliates and present or former directors, officers, employees, attorneys and agents or against any other person; and permanently enjoining all Indian Head common stockholders, including any who submit written requests for exclusion from the Common Stock Class, from prosecuting any derivative claims arising out of or relating to said matters.

EFFECTIVENESS OF AGREEMENT

7. (a) Effective Date. Subject to the provisions of subparagraph (b), this Agreement shall become effective upon entry of a judgment and order as provided in paragraph 6 above.

(b) Option to Terminate. TBI may, at its option, determine that this Agreement shall not become effective if:

(i) An order containing provisions substantially as described in paragraph 1 hereof is not entered within twenty (20) days after application therefor; or

(ii) Requests for exclusion are returned in the manner and within the time period prescribed above by persons who, had they been members of the Common Stock Class defined herein and had not requested exclusion therefrom, would have been entitled by reason of such membership to more than $500,000 in aggregate amount under the terms of this Agreement or the Merger; or

(iii) A judgment and order substantially as provided in paragraph 6 above is not entered within thirty (30) days following the conclusion of the hearing; or

(iv) The Merger is stayed or enjoined or cannot be effected for any reason.

(c) In the event that TBI determines that this Agreement shall not become effective under subparagraph (b), it shall give written notice of such determination to Austrian, Lance & Stewart, P.C. within ten (10) days after the occurrence of the event specified in subparagraph (b) upon which such determination is based. The giving of such notice by TBI shall be conclusive on all parties to this Agreement, and this Agreement shall thereupon become null and void except for paragraphs 4(g), 5(b), 8 and 9 hereof which are severable and shall survive.

(d) If the Court does not enter a judgment and order approving the settlement provided for in this Agreement, or if the Court enters such judgment and order and an appeal is taken therefrom and, on appeal, the judgment is modified so as to change any of the terms of this Agreement, or is finally reversed, then this Agreement and all other agreements, papers and documents relating thereto and all orders entered in connection therewith shall, except paragraphs 4(g), 5(b), 8 and 9 hereof, become null and void in all respects without further act by any party hereto, provided, however, that a modification on appeal of any award of attorneys' fees and expenses shall not be deemed a modification hereof.

DENIALS AND ADMISSIBILITY

8. It is expressly understood and agreed that this Agreement and any proceedings taken hereunder are not, and shall not be construed as, evidence of or an

admission by any of the defendants in the above-captioned actions of any liability or wrongdoing arising out of, or in connection with, any claims asserted in the complaints or amended complaints therein. Such defendants have denied, and they continue to deny, the allegations contained in the pleadings in the above-captioned actions, including the allegations therein that any plaintiff or class member suffered any monetary damage.

9. Neither this Agreement, nor any terms hereof, nor any negotiations or proceedings taken in pursuance of the settlement proposed by this Agreement nor any documents relating thereto, shall be offered or received in evidence, nor shall they be admissible, in any further proceedings against the defendants in the above-captioned actions or involving plaintiffs or any class members therein or in any other suits, actions or proceedings (except any action, suit or proceeding to enforce the terms of this Agreement) in the event that this Agreement does not become or remain effective, and the agreement contained in this paragraph shall survive the failure of this Agreement to become or remain effective.

10. In the event that the last day to do any act required by this Agreement occurs on a Saturday, Sunday or holiday in the State of New York or Delaware, the time to do or complete such act shall be extended to the next following business day.

11. This Agreement may be amended in writing upon the consent of all parties hereto and with the

approval of the Court, without further notice to any member of the classes designated herein.

Dated: New York, New York
July 20, 1976.

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By: _____

EXHIBITS ANNEXED TO FOREGOING STIPULATION AND AGREEMENT OF SETTLEMENT

(pp. 185a-1 thru 185a-47)

EXHIBIT A - ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD BRUCKER and DANIEL R. KAPLAN, as Trustees under the Trust Agreement dated November 15, 1968, made by WILTRUD E. GADBOYS, as Grantor, CECIL G. HUSKEY, W. T. STRATTON and NORTE & CO., a partnership composed of JOSEPH C. GALDI and RITA D. GALDI,

Plaintiffs,

-against-

THYSSEN-BORNEMISZA EUROPE N.V., THYSSEN-BORNEMISZA, INC., THYSSEN-BORNEMISZA HOLDINGS, INC., MARINE MIDLAND BANK, INDIAN HEAD INC., JAMES G. FERGUSON, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALISTER, JOHN E. O'SULLIVAN, RICHARD J. POWERS, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, HERBERT E. BACHRACH, GERARD B. HUISKAMP, WHITE, WELD & CO. INCORPORATED, L. EMERY KATZENBACH, H. H. THYSSEN-BORNEMISZA, R. L. GENILLARD and CHEMICAL BANK,

Defendants.

74 Civ. 5755 (CES)

ORDER

WILLIAM B. WEINBERGER,

Plaintiff,

-against-

RICHARD J. POWERS, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALISTER, JOHN E. O'SULLIVAN, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, JAMES G. FERGUSON, THYSSEN-BORNEMISZA, INC. and INDIAN HEAD INC.,

Defendants.

75 Civ. 229 (CES)

SHAMROCK CORPORATION, individually, and on behalf of all holders of Common Stock and Warrants of Indian Head Inc., similarly situated,

Plaintiffs,

-against-

INDIAN HEAD INC.; THYSSEN-BORNEMISZA GROUP N.V.; THYSSEN-BORNEMISZA, INC.; WHITE, WELD & CO. INCORPORATED; RICHARD J. POWERS; JAMES E. ROBISON, HERBERT E. BACHRACH; GERARD B. HUISKAMP; L. EMERY KATZENBACH; MARSHALL F. SMITH; H. H. THYSSEN-BORNEMISZA; R.L. GENILLARD; THYSSEN-BORNEMISZA HOLDINGS, INC. and CHEMICAL BANK,

Defendants.

75 Civ. 1736 (CES)

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Upon the Affidavit of William Klein II, sworn to on the 20th day of July, 1976, and upon the Stipulation and Agreement of Settlement dated July 20, 1976 as amended by the Amendment to Stipulation and Agreement of Settlement dated July 28, 1976 ("Agreement"), annexed hereto, which has been executed by counsel for the parties in the above-captioned actions, and upon the consent of counsel for the parties in the above-captioned actions, and upon all of the prior proceedings herein;

NOW, THEREFORE, it is hereby

ORDERED, that the above-captioned actions shall be maintained as class actions, for purposes of settlement only, on behalf of the following classes:

(i) Common Stock Class. All owners, beneficially or of record, of $1.00 par value common stock ("Common Stock") of Indian Head as of the date this Order is entered who continue to own such Common Stock on the date of the merger (the "Merger Date") to be effected as provided in the annexed Agreement;

(ii) Debenture Owner Class. All owners, beneficially or of record, of 5-1/2% Convertible Subordinated Debentures due April 15, 1993 of Indian Head ("Debentures") as of the date this Order is entered who continue to own such Debentures on the Merger Date;

(iii) Debenture Seller Classes. Former owners, beneficially or of record, of Debentures, as follows:

Debenture Seller Class A. All such owners on September 27, 1973 who sold such Debentures between September 27, 1973 and July 1, 1974, inclusive;

Debenture Seller Class B. All such owners on July 2, 1974 who sold such Debentures between July 12, 1974 and the date this Order is entered, inclusive;

(iv) Warrant Owner Classes. Owners, beneficially or of record, of warrants issued pursuant to the Warrant Agreement dated as of May 15, 1965 between Indian Head and Chemical Bank ("Warrants"), as follows:

Warrant Owner Class A. All such owners as of the date this Order is entered who continue to own such Warrants on the Merger Date;

Warrant Owner Class B. All members of Warrant Owner Class A who were owners of Warrants on July 2. 1974:

(v) Warrant Seller Classes. Former owners, beneficially or of record, of Warrants, as follows:

Warrant Seller Class A. All such owners on July 2, 1974 who sold such Warrants between July 12, 1974 and the date this Order is entered, inclusive;

Warrant Seller Class B. All such owners who sold such warrants between August 1, 1973 and July 1, 1974, inclusive; and it is further

ORDERED, that Edward Brucker and Daniel R. Kaplan are designated as representatives of all the foregoing classes; that William B. Weinberger is designated as representative of the Debenture Owner Class and Debenture Seller Classes; Cecil G. Huskey, W. T. Stratton and Shamrock Corporation are designated as representatives of the Warrant Owner Classes and Warrant Seller Classes; and that Norte & Co., a partnership composed of Joseph C. Galdi and Rita D. Galdi, is designated as representative of the Common Stock Class; and it is further

ORDERED, that Austrian, Lance & Stewart, P.C. is designated lead counsel for all classes designated herein, Weinstein & Levinson is designated co-counsel for the Debenture Owner Class and Debenture Seller Classes designated herein and Wolf, Haldenstein, Adler, Freeman, Herz & Frank as co-counsel for the Warrant Owner Classes and Warrant Seller Classes designated herein; and it is further

ORDERED, that a hearing shall be held on the ____ day of _____, 1976, at 10:00 o'clock in the forenoon of that day in Room 2703 in the United States Courthouse, Foley Square, New York, New York 10007, and continuing thereafter on such adjourned date or dates as the Court may direct, to determine whether the terms of the annexed Agreement, and the merger therein provided, are fair, reasonable and adequate, whether they should be approved by the Court and to schedule a subsequent hearing to be held without further notice to determine whether the fees and allowances as may be applied for by plaintiffs' counsel in the above-captioned actions should be approved; and it is further

ORDERED, that within ten (10) business days after entry of this Order, Thyssen-Bornemisza, Inc. ("TBI") shall mail or cause to be mailed, at its expense, by United States mail, postage prepaid, to each and every member of the classes designated above whose name and address appears on the records of Indian Head, at such address, a Notice of Settlement Hearing ("Notice") substantially in the form of Exhibit "B" to the annexed Agreement, and in the case of each and every member of the Debenture Seller Classes and the Warrant Seller Class A, TBI shall, in addition, mail or cause to be mailed to each Proofs of Claim substantially in the form of Exhibit "C" to the annexed Agreement, and that within five (5) days after such mailings TBI shall cause to be filed with the Clerk of the Court an affidavit showing that such mailings have been made as directed herein; and it is further

ORDERED, that TBI shall cause to be published at its expense the Notice substantially in the form of Exhibit "B" in The New York Times and The Wall Street Journal (Eastern, Midwest, Southwest and Pacific Coast editions) in columns no smaller than one-eighth of a page on one (1) business day in each of two (2) successive weeks commencing within ten (10) business days after the date of this Order, and further requiring that within five (5) days after the last of such publications TBI shall cause to be filed with the Clerk of the Court an affidavit of such publication; and it is further

ORDERED, that all brokerage firms and other financial institutions which are or were or whose nominees

are or were the record owners of Common Stock, Debentures or Warrants, shall transmit any Notices received to all persons who by their records are shown to be beneficial owners or former owners of Common Stock, Debentures or Warrants who are members of any class designated herein and any Proofs of Claim received to all such former beneficial owners who are members of the Debenture Seller Classes or Warrant Seller Class A designated herein, shall request such additional Notices and Proofs of Claim as are necessary to comply with this Order, and shall be reimbursed by TBI, upon written request, for the reasonable and necessary expenses of complying with this Order; and it is further

ORDERED, that the foregoing methods of notice are the best practicable under the circumstances and that the form of Notice in Exhibit "B" fully and fairly describes the terms of the settlement and merger provided for in the annexed Agreement; and it is further

ORDERED, that plaintiffs shall, with the cooperation of the Clerk of the Court, lease a numbered post office box of adequate size in the City of New York, in the name of the Clerk of the Court, for the purpose of receiving Proofs of Claim, requests for exclusion and any other communications from class members, and that all notices to class members shall bear the designation of said post office box as the return address; and it is further

ORDERED, that in order to assert a claim to the settlement funds provided for in the annexed Agreement, a member of the Debenture Seller Classes or the Warrant Seller Class A must mail to the Clerk of

the Court, at the post office box provided for herein, a Proof of Claim by _____, 1976, and that failure to mail a Proof of Claim by such date shall terminate any rights which he may have to participate in the distribution of the settlement funds provided for in the annexed Agreement and to assert any claim against any of the defendants arising from or relating to the subject matter of any of the pleadings in the above captioned actions, unless he has filed a written request for exclusion, as provided herein, from the class of which he would otherwise be a member; and it is further

ORDERED, that plaintiffs shall deliver to Shearman & Sterling, attorneys for certain defendants, (1) copies of communications received at the post office box provided for herein or by plaintiffs' counsel from members of the class within three (3) days of any request therefor, and (2) promptly, copies of replies to any inquiries or communications regarding the Notice; and it is further

ORDERED, that any person who desires to be excluded from any class shall mail to the Clerk of the Court, at the post office box provided for herein, a written request for exclusion, postmarked not later than fifteen (15) days prior to the hearing set herein, stating

(i) His or her name, address and telephone number;

(ii) The number of shares of Common Stock, principal amount of Debentures and number of Warrants he or she purchased and sold; and

(iii) The number of shares of common Stock, principal amount of Debentures and number of Warrants he or she continues to own; and

that any person who so mails such a written request for exclusion shall not share in the benefits of the settlement and will not be bound by any judgment entered thereon and that failure to submit a written request for exclusion by the prescribed date will result in such class member's being bound by the terms of any judgment or order in the above-captioned actions, including a judgment approving the settlement and the merger as provided in the annexed Agreement; and it is further

ORDERED, that no person, other than a class member who does not request exclusion in the manner provided for above, may object to the approval of the settlement provided for in the annexed Agreement, and that any class member who objects to the approval of the settlement provided for in the annexed Agreement may appear at the hearing personally or through counsel of his or her choice and show cause, if any he or she has, why the settlement and merger proposed in the annexed Agreement should not be approved as fair, reasonable and adequate, and why a judgment should not be entered thereon, provided, however, that no such class member will be heard, and no brief or other papers, if any, will be received or considered by the Court, except as the Court may in its discretion direct,

unless a notice of intention to appear and a statement of the position to be asserted and the grounds therefor, together with satisfactory proof of class membership, and any briefs or other papers which such class member may choose to submit, are filed with the Clerk of the Court and served upon Austrian, Lance & Stewart, P.C., 630 Fifth Avenue, Rockefeller Center, New York, N.Y. 10020, and upon Shearman & Sterling, 53 Wall Street, New York, N.Y. 10005, not later than fifteen (15) days prior to the hearing set herein; and it is further

ORDERED, that no class member shall be entitled in any way to contest the approval of the settlement and merger provided for in the annexed Agreement unless he or she has served and filed the papers specified above, and that any class member who fails to object in the manner prescribed shall be deemed to have waived, and shall be foreclosed forever from raising, any objections; and it is further

ORDERED, that the institution, maintenance, or prosecution of any and all actions, suits, claims, arbitrations or any other proceedings by any person arising out of or relating to the subject matter of any of the pleadings in the above-captioned actions, the terms of the annexed Agreement or the merger provided for therein shall be stayed and enjoined in any court other than before the Honorable Charles E. Stewart, Jr. of the United States District Court for the Southern District of New York, pending entry of a judgment and order determining whether the settlement and merger as

provided for in the annexed Agreement are fair, reasonable and adequate; and it is further

ORDERED, that the Court hereby retains jurisdiction to alter or amend this Order pursuant to Rule 23 of the Federal Rules of Civil Procedure.

Dated: New York, New York
July , 1976

U.S.D.J.

EXHIBIT B - NOTICE OF SETTLEMENT HEARING

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD BRUCKER et al., Plaintiffs, -against- THYSSEN-BORNEMISZA EUROPE N.V. et al., Defendants.	:	74 Civ. 5755 (CES)
WILLIAM B. WEINBERGER, Plaintiff, -against- RICHARD J. POWERS et al., Defendants.	:	75 Civ. 229 (CES)
SHAMROCK CORPORATION et al., Plaintiffs, -against- INDIAN HEAD INC. et al., Defendants.	:	75 Civ. 1736 (CES)

NOTICE OF INDIAN HEAD INC. CLASS ACTIONS, PROPOSED SETTLEMENT AND HEARING

TO: All Present Owners of Indian Head Common Stock, Convertible Debentures and Warrants

All Owners of Indian Head Debentures on September 27, 1973 Who Sold Them Thereafter

All Owners of Indian Head Warrants on July 2, 1974 Who Continue to Own Them

All Owners of Indian Head Warrants on July 2, 1974 Who Sold Them Thereafter

All Owners of Indian Head Warrants Who Sold Them Between August 1, 1973 and July 1, 1974.

A PROPOSED SETTLEMENT HAS BEEN REACHED IN THE ABOVE CAPTIONED ACTIONS. THIS NOTICE SETS OUT THE PROCEDURE BY WHICH ALL PRESENT OWNERS OF INDIAN HEAD INC. COMMON STOCK, CONVERTIBLE DEBENTURES OR WARRANTS, AND CERTAIN FORMER OWNERS OF INDIAN HEAD CONVERTIBLE DEBENTURES OR WARRANTS, MAY SHARE IN THE SETTLEMENT PROCEEDS IF THE PROPOSED SETTLEMENT IS APPROVED BY THE COURT.

1. PLEASE TAKE NOTICE THAT, pursuant to Rule 23 of the Federal Rules of Civil Procedure and pursuant to an order of the United States District Court for the Southern District of New York, dated _____, 1976:

A. Settlement Hearing. A hearing will be held in the above-captioned actions in Room _____, United States Courthouse, Foley Square, New York, New York, at 10.00 A.M. on _____, 1976 ("Settlement Hearing") on an application by the parties to these actions (i) to determine the fairness, reasonableness and adequacy of the proposed settlement and whether these actions should be dismissed on the merits and with prejudice as to all defendants, and (ii) if the proposed settlement be approved, to schedule a hearing to determine allowable fees, disbursements and expenses, as hereinafter more particularly described. (The Settlement Hearing may be adjourned by the Court without further notice other than an announcement in court on the above date.)

B. Class Certification. The above-captioned actions have been ordered to be maintained as class actions for purposes of this settlement on behalf of all Owners, beneficially or of record, of the following Indian Head securities, during the periods specified:

COMMON STOCK CLASS. All Owners of Indian Head Common Stock on _____, 1976 who have continuously owned such shares to and including the date of the proposed merger of Indian Head into Thyssen-Bornemisza Holdings, Inc. which will take place if the proposed settlement is approved (the "MERGER DATE").

DEBENTURE OWNER CLASS. All Owners of Indian Head 5 1/2% Convertible Subordinated Debentures due April 15, 1993 ("Debentures"), on _____, 1976 who have continuously owned them to and including the MERGER DATE.

DEBENTURE SELLER CLASS A. All Owners of Debentures on September 27, 1973 who sold such Debentures between September 27, 1973 and July 1, 1974

DEBENTURE SELLER CLASS B. All Owners of Debentures on July 2, 1974 who sold such Debentures between July 12, 1974 and _____, 1976.

WARRANT OWNER CLASS A. All Owners of Indian Head Warrants issued pursuant to the Warrant Agreement dated as of May 15, 1965 between Indian Head and Chemical Bank ("Warrants") on _____, 1976, who have continuously owned them to and including the MERGER DATE.

WARRANT OWNER CLASS B. All Owners of Warrants on July 2, 1974 who have held them continuously to and including the MERGER DATE.

WARRANT SELLER CLASS A. All Owners of Warrants on July 2, 1974 who sold such Warrants between July 12, 1974 and _____, 1976.

WARRANT SELLER CLASS B. All Owners of Warrants who sold such Warrants between August 1, 1973 and July 1, 1974.

WHAT YOU WILL RECEIVE UNDER THE PROPOSED SETTLEMENT AND HOW TO OBTAIN IT.

Proposed Cash Settlement Payments.

2. Under the proposed settlement, class members who accept the settlement and who comply with the procedures summarized below will receive the following cash payments:

COMMON STOCK CLASS [585,386 shares outstanding] - $32 per share, to be paid upon the Merger and submission of your Stock Certificates together with a properly filled out Transmittal Letter which will be sent to you upon the Merger.

DEBENTURE OWNER CLASS [14,295 Debentures (face value $1,000) outstanding] - $844.16 for each Debenture, to be paid after the Merger and upon submission of your Debenture Certificates together with a properly filled out Transmittal Letter, which will be sent to you upon the Merger, and written proof of the dates of purchase.

DEBENTURE SELLER CLASS A - If you can establish that you sold any Debentures for LESS than $650, you will be entitled to be paid the difference between $650 and your sales price (before deducting expenses of sale), but no more than $50 per Debenture, provided that you fill out the enclosed [color] Proof of Claim; attach to the Proof of Claim brokerage confirmations, monthly statements or other written proof of sales price and mail it in the enclosed envelope. Any objection by defendants to your Proof of Claim will be submitted to the Court for final determination. After the Merger, you will receive payment up to $50 per Debenture, provided the Court has not sustained any objection which may have been made to your Proof of Claim.

DEBENTURE SELLER CLASS B - If you can establish that you sold any Debentures for LESS than $701, you will be entitled to be paid the difference between $701 and your sales price (before deducting expenses of sale), but no more than $100 per Debenture, provided that you fill out the enclosed [color] Proof of Claim, attach to the Proof of Claim brokerage confirmations, monthly statements or other written proof of sales price and mail it in the enclosed envelope. Any objection by defendants to your Proof of Claim will be submitted to the Court for final determination. After the Merger, you will receive the payment up to $100 per Debenture, provided the Court has not sustained any objection which may have been made to your Proof of Claim.

WARRANT OWNER CLASS A [349,467 Warrants publicly outstanding] - $2.50 per Warrant, to be paid after the Merger and upon submission of your Warrant Certificates together with a properly filled out Transmittal Letter, which will be sent to you upon the Merger, and written proof of the dates of purchase.

WARRANT OWNER CLASS B - $4 per Warrant, to be paid after the Merger and upon submission of your Warrant Certificates together with a properly filled out Transmittal Letter which will be sent to you upon the Merger and written proof of the dates of purchase.

WARRANT SELLER CLASS A - $1.50 per Warrant, to be paid after the Merger, provided that you fill out the enclosed [color] Proof of Claim, attach to the Proof of Claim brokerage confirmations, monthly statements or other written proof of sale and mail it in the enclosed envelope. Any objection by defendants to your Proof of Claim will be submitted to the Court for final determination. After the merger, you will receive the payment of $1.50 per Warrant, provided the Court has not sustained any objection which may have been made to your Proof of Claim.

WARRANT SELLER CLASS B - The Settlement makes no provision for payment to members of this class because plaintiffs' counsel are of the opinion that members of this class can neither establish liability of the defendants, nor damages. The affidavit of plaintiffs' counsel dated July 20, 1976, on file in the Court and available for inspection, gives a more detailed explanation. Members of this Class will be bound by the proposed settlement, and thus receive no payment thereunder, unless they elect to be excluded as hereinafter provided.

Effect of Accepting Settlement.

3. By submitting a Proof of Claim or Transmittal Letter as described above, you will submit your claims to the jurisdiction of the Court and release the defendants from all claims which were or could have been asserted in these actions. If you are a class member and neither exclude yourself from the settlement in the manner prescribed below nor file a timely and proper Proof of Claim or Transmittal Letter as provided herein, you will be forever barred from recovery from the defendants with respect to all claims which are or could have been asserted in these actions.

Proposed Merger.

4. Upon entry of a Judgment and Order of the Court approving this settlement upon the terms and conditions of the settlement agreement, TBI shall cause INDIAN HEAD to be merged into THYSSEN-BORNEMISZA HOLDINGS, INC., a subsidiary of TBI, pursuant to

§253 of the Delaware Corporation Law (the "MERGER"), paying thereafter $32 for each share of Common Stock of INDIAN HEAD issued and outstanding on the MERGER DATE to holders of Common Stock.

Escrow Payments.

5. After the MERGER DATE, TBI will pay $12,100,000 into a Debenture Settlement Fund to be administered by MARINE MIDLAND BANK and pay $1,450,000 into a Warrant Settlement Fund to be administered by CHEMICAL BANK, and will make such additional payments to such Funds as are necessary to effectuate the terms of the proposed settlement. The Debenture and Warrant class members will be paid by MARINE MIDLAND BANK and CHEMICAL BANK respectively, the sums to which they are entitled from such Settlement Funds as promptly as practicable after receipt of Proofs of Claim and Transmittal Letters.

Settlement Agreement and Court Papers.

6. The full and complete terms of the proposed settlement are contained in a Stipulation and Agreement of Settlement ("Settlement Agreement"). The Settlement Agreement along with the pleadings and all other papers, including the Order of the Court certifying these actions as Class Actions and directing the Settlement Hearing herein described, are on file with the Clerk of the United States District Court for the Southern District of New York, Foley Square,

New York, New York, and are available for inspection at any time from 9:30 A.M. to 5:00 P.M.. Monday through Friday, holidays excepted, at the Office of the Clerk. Any questions you may have with respect to this Notice and the Settlement Agreement should be raised with your attorney or advisor, or directed to lead counsel for Plaintiffs, WILLIAM KLEIN II, ESQ., AUSTRIAN, LANCE & STEWART, P.C., 630 Fifth Avenue, New York, New York 10020 (Tel. No. [212] 489-9500), and not with the Court. In order to determine the tax consequences, if any, of the money received pursuant to the settlement, you should consider consulting your own accountant or attorney.

Attorneys Fees.

7. If the proposed settlement is approved by the Court, applications will be made by AUSTRIAN, LANCE & STEWART, P.C., lead counsel, WEINSTEIN & LEVINSON, co-counsel for the Debenture Owner Class and Debenture Seller Classes, and WOLF, HALDENSTEIN, ADLER, FREEMAN, HERZ & FRANK, co-counsel for the Warrant Owner and Warrant Seller classes, for their fees and expenses. TBI has agreed to pay the reasonable fees and expenses of counsel for plaintiffs in the above-captioned actions in such amounts as are awarded by the Court, but not more than an aggregate amount of $600,000.

The Settlement Hearing.

8. If you are satisfied with the proposed settlement, you need not appear at the Settlement Hearing, and your interests will be represented by plaintiffs' counsel. Any person who establishes that he or she is a member of any class described herein may appear at the Settlement Hearing and show cause, if he or she has any, why the proposed settlement should not be approved and the action dismissed. No person shall be heard at the Settlement Hearing unless notice of intention to appear and grounds for his or her objection in writing, together with any supporting papers and briefs which such class member may choose to submit, are filed with the Court on or before _____, 1976, showing due proof of service on both of the following:

Austrian, Lance & Stewart, P.C.
630 Fifth Avenue
New York, New York 10020
Lead Counsel for All Classes

Shearman & Sterling
53 Wall Street
New York, New York 10005
Attorneys for Certain Defendants

Any class member who does not make his or her objection in the manner provided herein shall be deemed to have waived such objection and shall be forever foreclosed from making any objection (by appeal or otherwise) to the proposed settlement. The filing of an objection shall not extend the time within which a class member may file an acceptable Proof of Claim or request exclusion from a class nor exclude the objector from any judgment entered in these actions.

DESCRIPTION OF THE LITIGATION

Original Brucker Complaint.

9. On December 31, 1974 the Brucker plaintiffs on behalf of themselves and other owners of Indian Head Convertible Debentures commenced an action against a number of defendants including INDIAN HEAD, THYSSEN-BORNEMISZA EUROPE N.V. (TBE), THYSSEN-BORNEMISZA, INC. (TBI) and certain officers and directors of those companies. This original Brucker Complaint alleged that no notice was sent to the Debenture owners of the Tender Offers made by TBE on September 27, 1973 and July 12, 1974, as a result of which TBI acquired 90.6% of Indian Head Common Stock; the Debentures and Common Stock were delisted from the New York Stock Exchange; the Debenture owners were thereby deprived of the opportunity to convert into Common Stock and receive $701 for each $1,000 Debenture; and after TBE acquired control and the Debentures and Common Stock were delisted, the market price for the Debentures had fallen below $500. (The above entitled Weinberger action, commenced in January 1975, made similar complaints on behalf of Debenture owners, and the above entitled Shamrock action, commenced in April, 1975 on behalf of the Indian Head Warrant owners, alleged that the terms of the Tender Offers were unfair.)

Brucker Amended Complaint.

10. On February 20, 1976 the Brucker plaintiffs filed an Amended Complaint on behalf of all

Indian Head Common Stock and Warrant owners, as well as Debenture owners, alleging that TBE had proposed on February 12, 1976 to merge Indian Head into a TBE subsidiary, on unfair and unlawful terms: $779 for the Debentures, which were then redeemable at $1,033; $30 for the Common Stock; and the Warrants, which were exercisable at the same $30 price as was being offered the Common Stock, would receive nothing. It further alleged that the merger was a redemption of the Debentures at $1,033; the failure to notify the Debenture owners of the tenders created a default causing the $1,000 principal to be due and payable; the merger had no business purpose; and TBE had used its majority control of Indian Head to dictate unfair prices to the members of all classes. (An Amended Complaint filed in the Shamrock action on March 4, 1976, made similar allegations on behalf of Warrant holders and Common Stock holders.) A preliminary injunction was requested to stop the merger, and on the return date of the preliminary injunction hearing the proposed merger was withdrawn ("Withdrawn Merger Proposal").

Second Amended Complaint.

11. On July 20, 1976, the Brucker plaintiffs filed, in connection with the proposed settlement, a Second Amended Complaint which embodied the facts, circumstances and allegations contained in the various proceedings since the litigation commenced. The plaintiffs include two Warrant holders owning an aggregate of 9,100 Warrants, and an owner of 32 shares of Common Stock. In addition to the allegations in the prior complaints, it was alleged that both tender offers were made in violation of the rights of Warrant owners.

Defendants' Denial of Liability.

12. The defendants, while denying all liability on the charges made in the actions, maintaining their innocence of any wrongdoing, and relying upon the stipulation that the settlement shall not in any event be construed as or deemed to be evidence or an admission or concession on the part of the settling defendants or any of them, of any liability or wrongdoing whatsoever, consider it desirable that the actions be settled. Such settlement is desired to avoid further expense, to preserve and protect their business reputations, to dispose of burdensome and protracted litigation and to permit the merger of Indian Head into a subsidiary of TBI to proceed unhampered by expensive litigation and the distraction and diversion of its executive personnel; and they have accordingly agreed to the settlement on the terms stated in the Settlement Agreement.

Plaintiffs' Counsel's Recommendation of Settlement.

13. Plaintiffs, by their attorneys and experts, have made a thorough and detailed investigation of the facts, circumstances and transactions involved in this action, and have conducted an extensive investigation of the ten year documentary record underlying the transactions involved in the above-captioned actions and of the financial, market and

economic aspects thereof. After taking into account the likelihood that this litigation, if not settled now, will be protracted and extensive, involving uncertain questions of establishing liability and difficulties in establishing and collecting damages, the risks inherent in litigation and potential time-consuming appeals, counsel for the plaintiffs have concluded that it would be in the best interests of plaintiffs and the classes to settle the actions on the terms of the proposed settlement.

In counsel's opinion (and taking into account that the Debentures and Warrants expire in 1993 and 1990, respectively), the class members will receive as much on settlement, and possibly more, than they might be awarded in damages, after trial, assuming they could obtain a judgment on liability, which plaintiffs' counsel deems questionable. Thus, the Warrant owner on July 2, 1974 who continues as an owner on the Merger Date receives $4 compared to nothing in the Withdrawn Merger Proposal and $4.50 in the market prior to the July 12, 1974 tender offer. $844.16 for the Debentures compares to the $1,000 face amount, the $701 requested in the original Brucker Complaint and $420 - $480 in the market after the Debentures were delisted from the New York Stock Exchange in September 1974. $32 for the Common Stock is $5 more than the tender offers and $10 more than the market price before the 1974 tender offer. The market prices on February 11, 1976, the day before the Withdrawn Merger Proposal was announced, were: Warrants: $2; Common Stock: $24; and for a $1,000 Debenture, $600.

Purpose of Notice.

14. This notice is being sent to you in the belief that you are an owner of Common Stock of Indian Head or that you are or were an owner of Debentures or Warrants and that your rights may be affected by these actions and the proceedings described in this notice. This notice is not an expression of any opinion by the Court as to the merits of any claim or defense in these actions, but is solely to inform you of the pendency of the actions and of the proposed settlement described herein, so that you may decide what steps you may wish to take in relation to these actions and the proposed settlement. Former Owners of Indian Head Common Stock who tendered their shares in either of the two Tender Offers described above are not affected by nor a part of the proposed settlement and, therefore, are not being sent notice thereof.

SPECIAL NOTICE TO BROKERAGE FIRMS AND OTHER FINANCIAL INSTITUTIONS

15. All brokerage firms and other financial institutions which are or were or whose nominees are or were the record owners of Common Stock, Debentures or Warrants are directed, by Order of the Court, to transmit any Notices received to all persons who by their records are shown to be beneficial owners or former owners of Common Stock, Debentures or Warrants who are members of any class designated herein and any Proofs of Claim received to all such former beneficial owners who are members of the Debenture Seller Classes or Warrant Seller Class A, are further directed to request from the Clerk of the United States District Court for the Southern District of New York, P.O. Box

____, New York, New York _____, such additional Notices and Proofs of Claim as are necessary to comply with the Court's Order, and shall be reimbursed by TBI, upon written request, for the reasonable and necessary expenses of complying with the Court's Order described in this paragraph.

Settlement Conditions.

16. This proposed settlement is subject to and will not become effective until final approval by the District Court. TBI has the option to terminate the Settlement Agreement if:

(a) Requests for exclusion from the settlement (see below) are returned by persons who, had they been members of the Common Stock Class and had not elected to be excluded therefrom, would have been entitled by reason of their Common Stock Class Membership to more than $500,000 in aggregate amount under the terms of the Settlement Agreement or the Merger; or

(b) A judgment and order of the Court approving this proposed Settlement upon the terms and conditions of the Settlement Agreement, including the Merger, is not entered within thrity (30) days following the conclusion of the Settlement Hearing; or

(c) The Merger is stayed or enjoined or cannot be effected for any reason.

PROOFS OF CLAIM BY SELLERS
OF DEBENTURES OR WARRANTS

Filing of Claims.

17. Annexed hereto are Proofs of Claim to be submitted by members of Debenture Seller Classes A and B and Warrant Seller Class A. The (color) Proof of Claim is to be promptly filled out by members of Debenture Seller Class A; the (color) Proof of Claim by Debenture Seller Class B; and the (color) Proof of Claim by Warrant Seller Class A. Each such Proof of Claim must be mailed to the address designated herein or filed with the Court no later than , 1976. A stamped return envelope is enclosed so that you can insert in it the Proof of Claim, accompanied by written evidence of your purchases and sales. Any class member who fails to mail a valid and timely request for exclusion and who fails to submit a Proof of Claim by such date shall be precluded from sharing in the distribution of the Settlement Funds, but will in all other respects be subject to the provisions of the Settlement Agreement and any judgment or orders entered pursuant thereto. A Proof of Claim shall be deemed submitted when posted if it has been properly filled out and signed, a postmark is indicated on the envelope, and it is mailed postage prepaid, addressed in accordance with the instructions given therein. (To be sure of a proper postmark, you should take the envelope to a Post Office window for hand stamping with a date).

Review of Claims.

18. Proofs of Claim and Transmittal Letters submitted by members of the various Debenture classes will be reviewed by Marine Midland Bank, and those submitted by members of the various Warrant classes will be reviewed by Chemical Bank. Any questions concerning the payment or nonpayment of any Proofs of Claim or Transmittal Letters will be referred to Austrian, Lance & Stewart, P.C., lead counsel for the classes, and Shearman & Sterling, counsel for certain defendants. Any questions unresolved by counsel will be submitted to the Court for final determination. Payment to any class member who participates in an appeal of a judgment approving the proposed settlement will be withheld until the determination of such appeal.

Payment of Expenses.

19. TBI shall pay all costs and expenses incurred in connection with the administration and distribution of the respective Settlement Funds and processing Proofs of Claim and Transmittal Letters and all costs and expenses incurred in the mailing and publication of this Notice, Proofs of Claim and Transmittal Letters.

CONSIDERATIONS AFFECTING RIGHTS OF SECURITY HOLDERS

Common Stock Owners.

20. After the Merger Date each holder of Common Stock, whether or not a member of the Common Stock Class, will be entitled pursuant to the Merger

to a cash payment of $32 per share in cancellation of each share of such Common Stock. Each owner of record of Common Stock on the Merger Date will have appraisal rights under the laws of the State of Delaware, so that, if he or she elects not to accept $32 per share pursuant to the Merger, he or she may seek appraisal of the value of his or her Common Stock.

Debenture Owners.

21. There is no requirement that a member of the Debenture Owner Class submit his or her Debentures and accept the $844.16 payment for each Debenture. He or she is entitled to hold his or her Debentures and receive periodic interest payments when due and principal payments at maturity. However, upon consummation of the Merger contemplated by the Settlement Agreement, an owner of Debentures will no longer have the right to convert such Debentures into Common Stock, but will be entitled only to receive a cash payment of $831.17 upon surrender for conversion of each Debenture. Interest in the amount of $27.50 per $1,000 principal amount of Debentures is payable on October 15, 1976 to holders of record on September 30, 1976. Any owner of Debentures who desires to convert his or her Debentures into Common Stock prior to the Merger in order to avail himself or herself of a right of appraisal under Delaware Law should discuss the advisability of such action with his or her legal and financial advisors. Such a conversion will result in his or

her exclusion from the Debenture Owner Class and he or she will be ineligible to receive the benefits of the Settlement Agreement.

Warrant Owners.

22. There is no requirement that a member of Warrant Owner Classes A or B submit his or her Warrants and accept the $2.50 or $4 payments provided by the Settlement Agreement. However, upon consummation of the Merger contemplated by the Settlement Agreement, an owner of Warrants will no longer have the right to exercise his or her Warrants for the purchase of Common Stock, but will be entitled only to receive a cash payment of $32 upon surrender of each Warrant and the payment to Indian Head of the then exercise price (currently $30 per Warrant). In addition, any owner of Warrants who desires to exercise his or her Warrants to purchase Common Stock prior to the Merger in order to avail himself or herself of a right of appraisal under Delaware law should discuss the advisability of such action with his or her legal and financial advisors. Such exercise of his or her Warrants will result in his or her exclusion from any Warrant Owner Class and he or she will be ineligible to receive the benefits of the Settlement Agreement.

ELECTION TO BE EXCLUDED FROM CLASS ACTION

Written Request.

23. Any class member may elect to be excluded from a class by mailing to the Clerk, United

States District Court, Southern District of New York, P.O. Box ____, New York, N.Y. _____, a written request for exclusion on or before _____, 1976. Any class member requesting exclusion from the proposed settlement must state in writing:

(a) His or her name, address and telephone number;

(b) The number of shares of Common Stock, principal amount of Debentures and number of Warrants he or she purchased and sold; and

(c) The number of shares of Common Stock, principal amount of Debentures and number of Warrants he or she continues to own.

Consequences of Exclusion.

24. A class member making a request for exclusion will not share in the benefits of the settlement, will not be bound by any judgment entered in the above-captioned actions, and will only be able to pursue his or her individual claim, if any. Failure to submit a request for exclusion by _____, 1976 will result in a class member being bound by the terms of any judgment or order in the above-captioned actions, including a judgment and order approving the proposed settlement.

Dated: New York, New York
_____, 1976

By Order of the Court:

Clerk of the United States
District Court
For the Southern District
of New York

EXHIBIT C - PROOF OF CLAIM

MAIL COMPLETED PROOF OF CLAIM FORM PROMPTLY TO:

*Clerk of the United States District Court
Southern District of New York
P. O. Box _____
New York, New York_____

PROOF OF CLAIM - DEBENTURE SELLER CLASS A

SUBMITTED BY (OR ON BEHALF OF)
DEBENTURE SELLER CLASS A
PERSONS WHO ON SEPTEMBER 27, 1973
OWNED INDIAN HEAD CONVERTIBLE DEBENTURES
AND WHO SOLD THEM
ON OR BEFORE JULY 1, 1974

Submitted Pursuant to the
Stipulation and Agreement of Settlement
Dated July 20, 1976 in
Edward Brucker et al. v. Thyssen-Bornemisza, Europe N.V. et al., 74 Civ. 5755 (CES),
and
William B. Weinberger v. Richard J. Powers et al., 75 Civ. 229 (CES),
and
Shamrock Corporation et al. v. Indian Head Inc. et al., 75 Civ. 1736 (CES)
United States District Court
Southern District of New York

PLEASE PRINT OR TYPE

I. IDENTITY OF CLAIMANT:

[Fill in appropriate spaces in only one of the following paragraphs A through E]

A. INDIVIDUAL OR JOINT OWNERSHIP: My (our) name(s) is (are)

_____

_____

*Only Proofs of Claim are to be sent to this box number assigned by the Clerk of the Court to Chemical Bank and Marine Midland Bank for processing of Proofs of Claim. All inquiries regarding the Settlement should be directed to Keith A. Taylor, Esq., Austrian, Lance & Stewart, P.C., 630 Fifth Avenue, New York, N.Y. 10020, lead counsel for plaintiffs.

and my(our) address is

_____

_____

B. CORPORATION: I am the _____ of

_____ whose

address is _____.

I am authorized to make this claim on behalf of the Corporation.

C. PARTNERSHIP: I am a member of _____

_____, a co-

partnership; our business address is

_____.

I am authorized to make this claim on behalf of the Partnership.

D. EXECUTORS OR ADMINISTRATORS: I am(we are)

_____

the executor(s) administrator(s) of the Estate of

_____, deceased,

and my(our) mailing address is: _____

_____.

[NOTE: Documentary Proof of Executors and Administrators Authority to Act must be submitted.]

E. OTHERS:

[Give full particulars including name, address, on whose behalf you are acting and capacity]

_____

_____

_____

[NOTE: Documentary Proof of Authority to Act must be submitted.]

II. FAMILIARITY WITH NOTICE:

I have read and am familiar with the contents of the Notice of Settlement Hearing in the above-captioned actions.

III. TRANSACTIONS IN CONVERTIBLE DEBENTURES OF INDIAN HEAD, INC.

A. On September 27, 1973, I(we), or the claimant(s) on whose behalf I am(we are) completing this Proof of Claim, was(were) the beneficial or record owner(s) of _____ [insert principal amount] of 5 1/2% Convertible Subordinated Debentures due April 15, 1993 of Indian Head, Inc. ("Debentures"), and between September 27, 1973 and July 1, 1974 sold _____ [insert principal amount] of such Debentures in the following, separately listed, transactions:

TRANSACTIONS

(1) Date(s) of Purchase

(2) Date(s) of Sale

(3) Principal Amount Sold

(4) Selling Price Per $100 Principal Amount (Before Deducting Expenses of Sale)

(5) Total Sales Price (Before Deducting Expenses of Sale)

(6) [Leave Blank]

1	2	3	4

(Attach additional sheets of paper if necessary.)

B. I(we) attach to this Proof of Claim broker's confirmations, monthly brokerage statements, or any other written documentation which substantiates the above sales transactions.

IV. CONSENT TO JURISDICTION OF COURT AND COVENANT NOT TO SUE.

I(we) submit this Proof of Claim in order to participate in the settlement provided for in the Stipulation and Agreement of Settlement dated July 20, 1976, as amended, and consent to the jurisdiction of the Court and to the release of my(our) claims against all of the defendants as provided in paragraph 3 of the Notice of Indian Head Inc. Class Actions, Proposed Settlement and Hearing. I(we) understand that the information contained in this Proof of Claim may be subject to further investigation and discovery under the Federal Rules of Civil Procedure, and I(we) agree to furnish additional information to support this claim if required to do so.

V. MAILING OR FILING PROOF OF CLAIM

I(we) understand that in order to receive any payment in this settlement, and pursuant to Court Order, I(we) must fill out completely and mail this Proof of Claim to the address designated by the Clerk of the Court as hereinabove set forth, or file it with the Clerk of the Court, on or before , 1976.

I(we) hereby affirm under the penalties of perjury that to the best of my(our) knowledge the information set forth above in this Proof of Claim is true and correct.

_____
Signature

_____
Signature

EXHIBIT D - MERGER CERTIFICATE

CERTIFICATE OF OWNERSHIP AND MERGER

MERGING

INDIAN HEAD INC.

INTO

THYSSEN-BORNEMISZA HOLDINGS INC.

THYSSEN-BORNEMISZA HOLDINGS INC., a corporation organized and existing under the laws of the State of Delaware,

DOES HEREBY CERTIFY THAT:

FIRST: That this corporation was incorporated on the day of September, 1976, pursuant to the General Corporation Law of the State Delaware.

SECOND: That this corporation owns at least ninety percent (i) of the outstanding shares of the Common Stock, par value $1 per share, of Indian Head Inc. ("Indian Head"), a corporation incorporated on the day of , 19 , pursuant to the General Corporation Law of the State of Delaware and (ii) of the outstanding shares of Series B Preferred Stock, without par value, of Indian Head, the only classes of capital stock of Indian Head as to which there are any shares outstanding.

THIRD: That this corporation, by the following resolutions of its Board of Directors, duly adopted pursuant to a Unanimous Written Consent dated as of September , 1976, determined to and did merge into itself said Indian Head:

RESOLVED, that after THYSSEN-BORNEMISZA HOLDINGS INC. has acquired 90% of the outstanding shares of each class of stock of INDIAN HEAD INC., THYSSEN-BORNEMISZA HOLDINGS INC. shall merge, and it hereby does merge, into itself said INDIAN HEAD INC., under Section 253 of the General Corporation Law of the State of Delaware and assumes all of its liabilities and obligations.

RESOLVED, that the merger shall be effective upon the date of filing of a Certificate of Ownership and Merger with the Secretary of State of the State of Delaware (the "Effective Date").

RESOLVED, that on the Effective Date: (i) the owners of shares of Common Stock, $1 par value, of INDIAN HEAD INC. then issued and outstanding (other than THYSSEN-BORNEMISZA HOLDINGS INC.) shall be entitled to receive and shall be paid for each such share, by virtue of the merger $32.00 in cash, and each such share will, by virtue of the merger and without any action on the part of the owner thereof, be cancelled and represent only a right to receive in exchange therefor, forthwith, $32.00 in cash; and (ii) the owners of shares of Series B Preferred Stock, without par value, of INDIAN HEAD INC. then issued and outstanding (other than THYSSEN-BORNEMISZA HOLDINGS INC.), if any, shall be entitled to receive and shall be paid for each such share, by virtue of the merger, $105.00 in cash and each such share will, by virtue of the merger and without any action on the part of the owner thereof be cancelled and represent only a right to receive in exchange therefor, forthwith $105.00 in cash; and (iii) the shares of Common Stock $1 par value, and of Series B Preferred Stock, without par value, of INDIAN HEAD INC. then issued and outstanding and owned by THYSSEN-BORNEMISZA HOLDINGS INC. shall no longer be outstanding and THYSSEN-BORNEMISZA HOLDINGS INC. shall not receive any consideration with respect to such shares.

RESOLVED, that after the Effective Date, each owner of shares of Common Stock, $1 par value, of INDIAN HEAD INC. outstanding at the time of the merger (other than THYSSEN-BORNEMISZA HOLDINGS INC.) shall, upon surrender of the certificate or certificates representing such shares to Chemical Bank, as paying agent, be entitled to receive, forthwith, $32.00 per share in cash and (ii) each owner of shares of Series B Preferred Stock, without par value, of INDIAN HEAD INC. outstanding at the time of the merger (other

than THYSSEN-BORNEMISZA HOLDINGS INC.) shall, upon surrender of the certificate or certificates representing such shares to Chemical Bank, as paying agent, be entitled to receive, forthwith, $105 per share in cash. If payment is to be made to a person other than the one in whose name the certificate surrendered is registered, it shall be a condition of such payment that the certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer and that the person requesting such payment shall pay any transfer or other taxes required by reason of the payment to a person other than the registered owner of the certificate surrendered, and establish to the satisfaction of THYSSEN-BORNEMISZA HOLDINGS INC. that such taxes have been paid or that no such tax is applicable. THYSSEN-BORNEMISZA HOLDINGS INC. shall pay all charges and expenses of Chemical Bank, as paying agent.

RESOLVED, that the proper officers of THYSSEN-BORNENISZA HOLDINGS INC. be, and they hereby are, directed in accordance with General Corporation Law of the State of Delaware to notify within 10 days after the Effective Date each of the stockholders of record of INDIAN HEAD INC. entitled to appraisal rights of the Effective Date and that appraisal rights are available.

RESOLVED, that the proper officers of THYSSEN-BORNEMISZA HOLDINGS INC. be, and they hereby are, directed to make and execute a Certificate of Ownership and Merger setting forth a copy of the resolutions to merge INDIAN HEAD INC. into THYSSEN-BORNEMISZA HOLDINGS INC. and assume its liabilities and obligations, and the date of adoption thereof, and to cause the same to be filed with the Secretary of State of the State of Delaware and a certified copy thereof recorded in the office of the Recorder of Deeds of New Castle County and to do all acts and things whatsoever, whether within or without the State of Delaware, which may be in anywise necessary or proper to effect said merger.

RESOLVED, that after the Effective Date THYSSEN-BORNEMISZA HOLDINGS INC. change its corporate name, by changing Article "FIRST" of its Certificate of Incorporation to read as follows:

"FIRST. The name of the Corporation is INDIAN HEAD INC."

and that the Certificate of THYSSEN-BORNEMISZA HOLDINGS INC. shall in all respects remain unchanged and shall continue as the Certificate of Incorporation of the surviving corporation.

185a-39

RESOLVED, that anything herein or elsewhere to the contrary notwithstanding, the merger may be terminated and abandoned by the Board of Directors of THYSSEN-BORNEMISZA HOLDINGS INC. at any time prior to the filing of the Certificate of Ownership and Merger with the Secretary of State of the State of Delaware.

RESOLVED, that the proper officers of THYSSEN-BORNEMISZA HOLDINGS INC. be, and they hereby are, authorized to take any and all such other action necessary or appropriate in connection with the organization of THYSSEN-BORNEMISZA HOLDINGS INC. and the aforesaid merger, and to execute such additional documents as they, or any of them, deem necessary, appropriate or convenient to carry out the purposes and intent of the foregoing resolutions.

IN WITNESS WHEREOF, said THYSSEN-BORNEMISZA HOLDINGS INC. has caused this certificate to be signed by G.B. Huiskamp, its President, and attested by L.J.M. Pijnenburg, its Secretary, this day of October, 1976.

THYSSEN-BORNEMISZA HOLDINGS INC.

By_____
President

[Corporate Seal]

Attest:

By_____
Secretary

EXHIBIT E - DEBENTURE OWNER CLASS TRANSMITTAL LETTER

LETTER OF TRANSMITTAL
TO ACCOMPANY CERTIFICATES FOR
5 1/2% CONVERTIBLE SUBORDINATED DEBENTURES
DUE APRIL 15, 1993
OF
INDIAN HEAD INC.

By Mail: DEBENTURES
Clerk of the United States
District Court for the
Southern District of
New York
P.O. Box _____
New York, New York _____

By Hand: Marine Midland Bank
[Address]

Gentlemen:

In accordance with the terms of the Court ordered settlement of the actions entitled Brucker et al. v. Thyssen-Bornemisza Europe N.V. et al., 74 Civ. 5755 (CES) and Weinberger v. Powers et al., 75 Civ. 229 (CES), the undersigned delivers to you herewith the following described certificate(s) representing 5 1/2% Convertible Subordinated Debentures due April 15, 1993 of Indian Head Inc. ("Debentures"). These certificate(s) are presented for payment of the cash distribution of $844.16 per $1000 principal amount of Debentures which, under the terms of the settlement, is to be paid upon surrender of each Debenture certificate owned continuously from _____, 1976 through the date of the merger (the "merger") of Indian Head Inc. into Thyssen-Bornemisza Holdings, Inc. ("TBH").

IN ORDER TO BE ENTITLED TO THE PAYMENT REFERRED TO ABOVE, THIS LETTER OF TRANSMITTAL TOGETHER WITH CERTIFICATES REPRESENTING THE DEBENTURES MUST BE POSTMARKED OR DELIVERED TO MARINE MIDLAND BANK BY , 1976.

Tax Identification or Social Security Number:	Certificate Number	Principal Amount of Debentures Represented by Certificate	[Leave Blank]
Print Name and address of Registered Owner(s)		$	
	Total	$	

The undersigned claims that the Debenture(s) evidenced by each certificate submitted herewith was owned by him on _____, 1976 as evidenced by the attached brokerage confirmations, monthly statements or other written proof of ownership.

185a-41

The undersigned represents that he has full authority to sell and to transfer the above-mentioned Debentures, and will transfer good title thereto, free and clear of all liens, claims and encumbrances. The undersigned will, upon request, execute any additional documents requested to complete the sale and transfer of the Debentures. All authority conferred or agreed to be conferred in this Letter of Transmittal shall be binding upon the successors, assigns, heirs, executors, administrators and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned.

You are hereby instructed to make the payment of $844.16 per $1000 principal amount of Debentures with respect to the Debenture(s) evidenced by the enclosed certificate(s) by forwarding a check in payment thereof to the undersigned at the above address unless otherwise indicated below and to surrender said certificate(s) for cancellation.

This space to be filled in ONLY when check is to be issued in a name other than that of the registered owner(s)	This space to be filled in ONLY when check is to be delivered to an address other than that of the registered owner(s)
Name (Print)	To: . . . . .
Address	. . . . .
. . . . .	. . . . .

The undersigned submits this Transmittal Letter under the terms of the Court ordered settlement in the above-entitled actions and submits to the jurisdiction of the United States District Court for the Southern District of New York with respect to this claim and agrees to be bound by and subject to the terms of the Court's judgment and order of settlement. The undersigned understands that the information contained in this Transmittal Letter may be subject to further investigation and discovery under the Federal Rules of Civil Procedure and agrees to furnish additional information to support this claim if required to do so.

In consideration of the payment of $844.16 per $1000 principal amount of Debentures evidenced by the attached certificate(s), the undersigned hereby covenants by these presents for himself, his heirs, executors, administrators, personal representatives, successors and assigns, never to issue, commence, assist in any way, prosecute or cause, permit or advise to be commenced or prosecuted against any of the defendants in the above entitled actions, whether or not served with summons or complaint, their personal representatives, trustees, heirs and assigns, and as to the corporate defendants, in addition, their predecessors, successors, parents, subsidiaries, affiliates and present or former directors, officers, employees, attorneys and agents or against any other person, any action, suit or proceeding based upon any

claims, demands, transactions, representations, causes of action, obligations, damages or liabilities of any nature whatsoever, whether or not now known, suspected, or claimed which arise out of or relate to any matters set forth in the complaints or amended complaints or any claim relating to consummation of the Merger.

Dated: . . . . . , 1976

PLEASE
SIGN
HERE . . . . . .

. . . . . .
Signature(s) of Debenture holder(s)

. . . . . .
Signatures(s) Guaranteed
(See Instruction 2)

(Do not fill or write in spaces below)

Received by	Schedule	Check drawn	Amount	Check No.

(Please read carefully the Instructions on the Reverse Side of this Letter)

INSTRUCTIONS

1. Completion and Delivery of Letter of Transmittal. This Letter of Transmittal must be filled in properly, signed and mailed or delivered with the Debenture certificate(s) to the respective addresses set forth on the front hereof by _____, 1976. If additional space is needed for listing certificates, attach a separate sheet. The method of delivery of certificates is at the election and risk of the Debentureholders, but if certificates are sent by mail, it is recommended that they be sent by registered mail, properly insured.

2. Signing Letter of Transmittal. The name(s) of the Debentureholder(s) on the Letter of Transmittal should be signed in exactly the same manner as it (they) appear(s) on the Debenture certificate(s) (or in the assignment(s), if the Debenture certificate(s) have been assigned). If the Letter of Transmittal is signed by an administrator, executor, trustee, guardian, attorney, agent or other person acting in a fiduciary or representative capacity, or by an officer on behalf of a corporation, the person executing the Letter of Transmittal must give his full title in such capacity, and proper documentary evidence of authority to act in such capacity must be furnished with the Letter of Transmittal. If the certificates are owned of record by two or more joint owners then all such owners must sign the Letter of Transmittal. Signatures on the Letter of Transmittal must be guaranteed by a bank or trust company in the United States having an office or correspondent in The City of New York or by a firm having membership on a national securities exchange.

3. Endorsement of Certificate(s). If payment is to be made to the registered holder(s) of the certificate(s) presented, such certificate(s) need not be endorsed or assigned for transfer. If payment is to be made to someone other than the registered holder(s), the certificate(s) must be properly endorsed or be accompanied by properly executed assignment(s) and the signature(s) on the endorsement or the assignment(s) must be guaranteed by a bank or trust company in the United States having an office or correspondent in The City of New York, or by a firm having membership on a national securities exchange, and payment of or exemption from transfer taxes arising by reason of such payment to a person other than the registered holder must be established to the satisfaction of TBH (or the amount of any such transfer taxes will be deducted from the proceeds).

EXHIBIT E - WARRANT OWNER CLASS TRANSMITTAL LETTER

LETTER OF TRANSMITTAL
TO ACCOMPANY CERTIFICATES FOR
WARRANTS ISSUED PURSUANT TO THE
WARRANT AGREEMENT DATED AS OF
MAY 15, 1965 BETWEEN
INDIAN HEAD INC. AND
CHEMICAL BANK

By Mail: WARRANTS
Clerk of the United States
District Court for the
Southern District of
New York
P.O. Box _____
New York, New York _____

By Hand: Chemical Bank
55 Water Street
2nd Floor
North Building
New York, New York
10041

Gentlemen:

In accordance with the terms of the Court ordered settlement of the actions entitled Brucker et al. v. Thyssen-Bornemisza Europe N.V. et al., 74 Civ. 5755 (CES) and Weinberger v. Powers et al., 75 Civ. 229 (CES), the undersigned delivers to you herewith the following described certificate(s) representing Warrants issued pursuant to the Warrant Agreement dated as of May 15, 1965 between Indian Head Inc. and Chemical Bank. These certificate(s) are presented for payment of the cash distribution of $2.50 per Warrant which, under the terms of the settlement is to be paid upon surrender of each Warrant certificate owned continuously from _____, 1976 through the date of the merger (the "Merger") of Indian Head Inc. into Thyssen-Bornemisza Holdings, Inc. ("TBH") and an additional $1.50 for each such Warrant owned continuously from July 2, 1974 through the date of the Merger.

IN ORDER TO BE ENTITLED TO THE PAYMENTS REFERRED TO ABOVE, THIS LETTER OF TRANSMITTAL TOGETHER WITH THE WARRANT CERTIFICATE (S) MUST BE POSTMARKED OR DELIVERED TO CHEMICAL BANK BY _____, 1976.

Tax Identification or Social Security Number:			
Print Name and Address of Registered Owner(s)	Certificate Number	Number of Warrants Represented by Certificate	[Leave Blank]
	Total		

The undersigned claims that the Warrant(s) evidenced by each certificate submitted herewith was owned by him on _____, 1976 as evidenced by the attached brokerage confirmation, monthly statements or other written proof of ownership and further claims that the Warrant(s) evidenced by the above certificate(s) number(s) _____ were owned by him on July 2, 1974 as evidenced by the attached brokerage confirmations, monthly statements or other written proof of ownership.

The undersigned represents that he has full authority to sell and to transfer the above-mentioned Warrants, and will transfer good title thereto, free and clear of all liens, claims and encumbrances. The undersigned will, upon request, execute any additional documents requested to complete the sale and transfer of the Warrants. All authority conferred or agreed to be conferred in this Letter of Transmittal shall be binding upon the successors, assigns, heirs, executors, administrators and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned.

You are hereby instructed to make the payment of $2.50 per Warrant with respect to the Warrant(s) evidenced by the enclosed certificate(s) owned on _____, 1976 and an additional $1.50 for each such Warrant claimed to have been owned on July 2, 1974 by forwarding a check in payment thereof to the undersigned at the above address unless otherwise indicated below and to surrender said certificate(s) for cancellation.

This space to be filled in ONLY when check is to be issued in a name other than that of the registered owner(s)	This space to be filled in ONLY when check is to be delivered to an address other than that of the registered owner(s)
Name (Print).	To: . . . . .
Address	. . . . .
. . . . .	. . . . .

The undersigned submits this Letter of Transmittal under the terms of the Court ordered settlement in the above-entitled actions and submits to the jurisdiction of the United States District Court for the Southern District of New York with respect to this claim and agrees to be bound by and subject to the terms of the Court's judgment and order of settlement. The undersigned understands that the information contained in this Letter of Transmittal may be subject to further investigation and discovery under the Federal Rules of Civil Procedure, and agrees to furnish additional information to support this claim if required to do so.

In consideration of the payment claimed above, the undersigned hereby covenants by these presents for himself, his heirs, executors, administrators, personal representatives, successors and assigns, never to issue, commence, assist in any way, prosecute or cause, permit or advise to be commenced or prosecuted against any of the defendants in the above entitled

actions, whether or not served with summons or complaint, their personal representatives, trustees, heirs and assigns, and as to the corporate defendants, in addition, their predecessors, successors, parents, subsidiaries, affiliates and present or former directors, officers, employees, attorneys and agents or against any other person, any action, suit or proceeding based upon any claims, demands, transactions, representations, causes of action, obligations, damages or liabilities of any nature whatsoever, whether or not now known, suspected, or claimed which arise out of or relate to any matters set forth in the complaints or amended complaints or any claim relating to consummation of the Merger.

Dated: . . . . . , 1976

PLEASE
SIGN
HERE . . . . . .

. . . . . .
Signature(s) of Warrantholder(s)

. . . . . .
Signature(s) Guaranteed
(See Instruction 2)

(Do not fill or write in spaces below)

Received by	Schedule	Check drawn	Amount	Check No.

(Please read carefully the Instructions on the Reverse Side of this Letter)

INSTRUCTIONS

1. Completion and Delivery of Letter of Transmittal. This Letter of Transmittal must be filled in properly, signed and mailed or delivered with the Warrant certificate(s) to the respective addresses set forth on the front hereof by _____, 1976. If additional space is needed for listing certificates, attach a separate sheet. The method of delivery of certificates is at the election and risk of the Warrantholders, but if certificates are sent by mail, it is recommended that they be sent by registered mail, properly insured.

2. Signing Letter of Transmittal. The name(s) of the Warrantholder(s) on the Letter of Transmittal should be signed in exactly the same manner as it (they) appear(s) on the Warrant certificate(s) (or in the stock power(s), if the Warrant certificate(s) have been assigned). If the Letter of Transmittal is signed by an administrator, executor, trustee, guardian, attorney, agent or other person acting in a fiduciary or representative capacity, or by an officer on behalf of a corporation, the person executing the Letter of Transmittal must give his full title in such capacity, and proper documentary evidence of authority to act in such capacity must be furnished with the Letter of Transmittal. If the certificates are owned of record by two or more joint owners then all such owners must sign the Letter of Transmittal. Signatures on the Letter of Transmittal must be guaranteed by a bank or trust company in the United States having an office or correspondent in The City of New York or by a firm having membership on a national securities exchange.

3. Endorsement of Certificate(s). If payment is to be made to the registered holder(s) of the certificate(s) presented, such certificate(s) need not be endorsed or assigned for transfer. If payment is to be made to someone other than the registered holder(s), the certificate(s) must be properly endorsed or be accompanied by properly executed stock power(s), and the signature(s) on the endorsement or the stock power(s) must be guaranteed by a bank or trust company in the United States having an office or correspondent in The City of New York, or by a firm having membership on a national securities exchange, and payment of or exemption from transfer taxes arising by reason of such payment to a person other than the registered Warrantholder must be established to the satisfaction of TBH (or the amount of any such transfer taxes will be deducted from the proceeds).

STIPULATION AND ORDER THAT AGREEMENT IS AMENDED (Filed July 30, 1976)

UNITED STATES DISTRICT COURT (pp. 186a- 192a) 186a
SOUTHERN DISTRICT OF NEW YORK

EDWARD BRUCKER and DANIEL R. KAPLAN, as Trustees under the Trust Agreement dated November 15, 1968, made by WILTRUD E. GADBOYS, as Grantor, CECIL G. HUSKEY, W. T. STRATTON and NORTE & CO., a partnership composed of JOSEPH C. GALDI and RITA D. GALDI,

Plaintiffs,

-against-

THYSSEN-BORNEMISZA EUROPE N.V., THYSSEN-BORNEMISZA, INC., THYSSEN-BORNEMISZA HOLDINGS, INC., MARINE MIDLAND BANK, INDIAN HEAD INC., JAMES G. FERGUSON, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALISTER, JOHN E. O'SULLIVAN, RICHARD J. POWERS, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, HERBERT E. BACHRACH, GERARD B. HUISKAMP, WHITE, WELD & CO. INCORPORATED, L. EMERY KATZENBACH, H. H. THYSSEN-BORNEMISZA, R. L. GENILLARD and CHEMICAL BANK,

Defendants.

WILLIAM B. WEINBERGER,

Plaintiff,

-against-

RICHARD J. POWERS, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALISTER, JOHN E. O'SULLIVAN, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, JAMES G. FERGUSON, THYSSEN-BORNEMISZA, INC. and INDIAN HEAD INC.,

Defendants.

SHAMROCK CORPORATION, individually, and on behalf of all holders of Common Stock and Warrants of Indian Head Inc., similarly situated,

Plaintiffs,

-against-

INDIAN HEAD INC.; THYSSEN-BORNEMISZA GROUP N.V.; THYSSEN-BORNEMISZA, INC.; WHITE, WELD & CO. INCORPORATED; RICHARD J. POWERS; JAMES E. ROBISON, HERBERT E. BACHRACH; GERARD B. HUISKAMP; L. EMERY KATZENBACH; MARSHALL F. SMITH; H. H. THYSSEN-BORNEMISZA; R.L. GENILLARD; THYSSEN-BORNEMISZA HOLDINGS, INC. and CHEMICAL BANK,

Defendants.

U.S. DISTRICT COURT FILED JUL 30 1976 S.D. OF N.Y.

74 Civ. 5755 (CES)

File in

RECEIVED CHAMBERS

JUL 29 1976

AMENDMENT TO STIPULATION AND AGREEMENT OF SETTLEMENT

75 Civ. 229 (CES)

75 Civ. 1736 (CES)

MICROFILM JUL 30 1976

BEST COPY AVAILABLE

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76-7578

WHEREAS, counsel for the parties in 74 Civ. 5755 (CES) and 75 Civ. 229 (CES) executed and submitted to the Court for its consideration a Stipulation and Agreement of Settlement on July 20, 1976 ("Agreement"); and

WHEREAS, Shamrock Corporation, individually and on behalf of all those for whom it brought an action (75 Civ. 1736 (CES)), desires to join as a party to the Agreement;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, subject to the approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, that the Agreement is hereby amended as follows, and, as amended, is agreed to by Shamrock Corporation:

CAPTION

1. The caption of the Agreement is amended by adding thereto:

"----------x

SHAMROCK CORPORATION, individually, and on behalf of all holders of Common Stock and Warrants of Indian Head Inc., similarly situated,

Plaintiffs,

-against-

INDIAN HEAD INC.; THYSSEN-BORNEMISZA GROUP N.V.; THYSSEN-BORNEMISZA INC.; WHITE, WELD & CO. INCORPORATED; RICHARD J. POWERS; JAMES E. ROBISON; HERBERT E. BACHRACH; GERARD B. HUISKAMP; L. EMERY KATZENBACH; MARSHALL F. SMITH; H. H. THYSSEN-BORNEMISZA; R. L. GENILLARD; THYSSEN-BORNEMISZA HOLDINGS, INC., and CHEMICAL BANK,

75 Civ. 1736 (CES)

Defendants.

----------x".

2. Subparagraph 1(b) of the Agreement is amended to read as follows:

"(b) Appointing the following class representatives: Edward Brucker and Daniel R. Kaplan as representatives of all the foregoing classes; William B. Weinberger as representative of the Debenture Owner Class and Debenture Seller Classes; Cecil G. Huskey, W. T. Stratton and Shamrock Corporation as representatives of the Warrant Owner Classes and Warrant Seller Classes; and Norte & Co., a partnership composed of Joseph C. Galdi and Rita D. Galdi, as representative of the Common Stock Class;".

3. Subparagraph 1(c) of the Agreement is amended to read as follows:

"(c) Designating Austrian, Lance & Stewart, P.C. as lead counsel for all classes designated therein, Weinstein & Levinson as co-counsel for the Debenture Owner Class and Debenture Seller Classes designated therein and Wolf, Haldenstein, Adler, Freeman, Herz & Frank ('Wolf, Haldenstein') as co-counsel for the Warrant Owner Classes and Warrant Seller Classes designated therein;".

4. Subparagraph 2(a) of the Agreement is amended to read as follows:

"(a) Within two (2) days after the Merger Date, TBI shall deliver the sum of $12,100,000, and such additional sums as may become necessary to effectuate the terms of this Agreement (the "Debenture Settlement Fund") to Marine Midland Bank ("Marine") and the sum of $1,450,000, and such additional sums as may become necessary to effectuate the terms of this Agreement (the "Warrant Settlement Fund") to Chemical Bank ("Chemical"), to receive and hold in escrow, invest and ultimately deliver out of escrow, in accordance with the terms and conditions of a Debenture Escrow Agreement and a Warrant Escrow Agreement, respectively, each of which shall contain the provisions specified in paragraph 4 hereof, and, subject to Court approval, TBI shall also deliver to Chemical a sum not in excess of $600,000 for any award(s) by the Court for attorneys' fees and expenses in accordance with paragraph 5(a) hereof (the "Fee Fund") pursuant to a Fee Escrow Agreement among Chemical; Austrian, Lance & Stewart, P.C.; Weinstein & Levinson; Wolf, Haldenstein; and Shearman & Sterling; and".

5. Subparagraph 5(a) is amended to read as follows:

"(a) Plaintiffs' Attorneys and Experts. Subject to a judgment of the Court being entered approving the settlement and Merger provided for in this Agreement, plaintiffs' attorneys in the above-captioned actions will apply to the Court for an allowance of reasonable fees and expenses. TBI agrees that it will pay reasonable counsel fees and expenses in such amounts as are awarded by the Court, but no more than an aggregate of $600,000. Plaintiffs' attorneys agree to accept payment of such awards, not exceeding the above amount, in full and final satisfaction of their respective applications and claims for fees and expenses and that they will not make any claim for any fees and expenses against any Settlement Fund or against any defendant except for the amounts so awarded by the Court and paid into the Fee Fund by TBI."

Dated: New York, New York
July 28, 1976

AUSTRIAN, LANCE & STEWART, P.C.
Attorneys for Plaintiffs
Edward Brucker et al.
630 Fifth Avenue
New York, N. Y. 10020

By: _____
A Member of the Firm

CRAVATH, SWAINE & MOORE
Attorneys for Defendants
James G. Ferguson,
James M. Flack,
Andrew Kalman,
Paul W. McAlister,
John E. O'Sullivan,
Richard J. Powers,
James E. Robison,
Robert M. Schwarzenbach and
Marshall F. S. Smith
One Chase Manhattan Plaza
New York, N. Y. 10005

By: _____
A Member of the Firm

WEINSTEIN & LEVINSON
Attorneys for Plaintiff
William B. Weinberger
11 Park Place
New York, N. Y. 10007

By: _____
A Member of the Firm

SHEARMAN & STERLING
Attorneys for Defendants
Thyssen-Bornemisza Europe
N.V.,
Thyssen-Bornemisza Inc.,
White, Weld & Co.
Incorporated,
Herbert E. Bachrach,
Gerard B. Huiskamp,
L. Emery Katzenbach,
H. H. Thyssen-Bornemisza
and R. L. Genillard
53 Wall Street
New York, N. Y. 10005

By: _____
A Member of the Firm

WOLF, HALDENSTEIN, ADLER,
FREEMAN, HERZ & FRANK
Attorneys for Plaintiff
Shamrock Corporation
270 Madison Avenue
New York, N. Y. 10016

By: _____
A Member of the Firm

RICHARD J. CUTLER, ESQ.
Attorney for Defendant
Indian Head Inc.
1211 AVenue of the Americas
New York, N. Y. 10036

By: _____

So ordered: July 29, 1976

_____
U.S.D.J.

ROMES' NOTICE OF INTENTION TO APPEAR (Filed September 27, 1976)
(pp. 193a-200a)

U. S. DISTRICT COURT
FILED
SEP 27 1976
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD BRUCKER et al.,
Plaintiffs,

-- against --

THYSSEN-BORNEMISZA EUROPE N.V. et al.,
Defendants.

74 Civ. 5755 (CES)

RECEIVED
CHAMBERS
JUDGE STEWART

SEP 28 1976

WILLIAM B. WEINBERGER,
Plaintiff,

-- against --

RICHARD J. POWERS et al.,
Defendants.

75 Civ. 229 (CES)

SHAMROCK CORPORATION et al.,
Plaintiffs,

-- against --

INDIAN HEAD INC. et al.,
Defendants

75 Civ. 1736 (CES)

NOTICE OF INTENTION TO APPEAR, OBJECT AND SHOW CAUSE WHY THE PROPOSED SETTLEMENT SHOULD NOT BE APPROVED

To: HONORABLE CHARLES E. STEWART,
United States District Court for the
Southern District of New York;

AUSTRIAN, LANCE & STEWART, P.C.
630 Fifth Avenue
New York, New York 10020
Lead Counsel for all Classes of Indian Head
Securities for purposes of said Settlement only

SHEARMAN & STERLING
53 Wall Street
New York, New York 10005
Attorneys for Certain Defendants

NOTICE IS HEREBY GIVEN THAT, pursuant to Rule 23 of the Federal Rules of Civil Procedure and pursuant to an Order of the United States District Court for the Southern District of New York, dated August 2, 1976, Morton P. Rome and Marjorie T. Rome, Trustees under a Trust Agreement made November 22, 1954 for the

benefit of Sally P. Rome, ("Objectors" herein), owners of $25,000 principal amount of 5 1/2% Convertible Subordinated Debentures due April 15, 1993 of Indian Head Inc., on behalf of themselves and other Debenture Owners similarly situated, intend to appear at the Settlement Hearing provided for in the said Order, object and show cause why the proposed Stipulation and Agreement of Settlement, filed in the captioned proceedings should not be approved. In support thereof Objectors hereby state the following:

1. Objectors are and have been for many years resident and domiciled at 204 Kent Road, Wyncote, Pennsylvania, 19095, telephone numbers 215-887-9523 and 215-887-9244.

2. On August 2, 1976 and prior to the institution of the captioned proceedings Objectors were as Trustees under the said Trust Agreement owners of the said Indian Head 5 1/2% Convertible Subordinated Debentures due April 15, 1993, and have continuously owned said Debentures to and including the date hereof, and are therefore and continue to be members of the "Debenture Owner Class" specified in the above mentioned Order of the Court, dated August 2, 1976.

The ownership of Debentures by Objectors is evidenced by the register of such Debentures with Marine Midland Grace Trust Company of New York as Trustee, to which reference is hereby made. Copies of said Debentures are attached hereto as Exhibit "A" and made a part hereof.

3. Objectors have received by mail, postmarked August 16, 1976, copy of the Notice of Indian Head Inc. Class Actions, Proposed Settlement and Hearing.

4. Objectors intend to appear and make objections at the Settlement Hearing specified in the said Notice, and show cause why the said Proposed Settlement should not be approved.

5. The grounds for the said objections are stated in the annexed Brief in Support of Objections to the Proposed Settlement. Said grounds include, without being limited to, the following:

A. The Stipulation and Agreement of Settlement violates the following constitutional rights of Objectors and other Debenture Owners similarly situated:

(1) to procedural due process under the Fifth Amendment to the U.S. Constitution because of the inadequacy of the representation of the Debenture Owner Class and of the inadequacy of the Notice;

(2) to substantive due process under the Fifth Amendment and the Fourteenth Amendment, Section 1, to the U.S. Constitution, if the proposed Settlement is approved over the objections herein made, becomes effective, and the proposed merger consummated;

(3) to have preserved unimpaired under Article I, Section 10(1) of the U.S. Constitution the obligation of the contracts of Objectors and other Debenture Owners similarly situated provided for in the Debentures and the Indenture, if the proposed Settlement is approved over the objections herein made, becomes effective, and the proposed merger consummated.

B. The Rules Enabling Act (28 U.S.C. Section 2072, as amended Nov. 6, 1966, Pub. L. 89-773, §1, 80 Stat. 1323) which authorized the United States Supreme Court to promulgate the Federal Rules of Civil Procedure provides that "[s]uch rules shall not abridge, enlarge or modify any substantive right". Amended Rule 23 of the

Fed. R. Civ. P. was not intended to affect substantive rights. Despite this, the proposed Settlement has been structured to use and abuse the procedural device of Rule 23 in a wrongful attempt to abridge and modify the substantive rights of Objectors and other Debenture Owners similarly situated to convert the Debentures into shares of Common Stock at the rates and upon the terms provided in the Indenture without alteration or impairment, in the absence of the written consent of each holder of each Debenture so affected, and, in the event of a merger, without alteration or impairment, in the absence of the written consent of each holder of each Debenture affected.

It is specifically provided on the reverse of the Debentures that in connection with the execution by the Company and the Trustee of supplemental indentures with the consent of holders of not less than 66 2/3% in aggregate principal amount of the Debentures at the time outstanding "adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or modifying in any manner the rights and obligations of the holders of the Debentures and of the Company that no such supplemental indenture shall (i) .....alter or impair the right to convert the same into shares of Common Stock at the rates and upon the terms provided in the Indenture, without the consent of the holder of each Debenture so affected...."

C. The Stipulation and Agreement of Settlement provided, and the Order of the Court, dated August 2, 1976, constituted the above-captioned actions to be class actions, "for purposes of settlement only", a procedure unauthorized by Rule 23 as amended, and violative of the provisions of the Manual for Complex Litigation (1975), Part I,

§1.40, p. 25, and §1.46, p. 54-57, which provisions are directly applicable in the present circumstances. The substantive nature of the proposed Settlement is in direct conflict with and is adverse to the interests of those Debenture Owner Class members such as Objectors and other Debenture Owners similarly situated, who are constitutionally and contractually free to assert their several rights accorded them by their Debentures and the Indenture pursuant to which those securities were issued and to challenge any attempt to alter or impair their rights to convert into Common Stock.

D. Those persons designated by the Stipulation and Agreement of Settlement and the Order of the Court, dated August 2, 1976, as representatives of the Debenture Owner Class and who seek approval of the proposed Settlement may not legally be regarded as members of the same class as Objectors and others similarly situated who challenge the validity of the proposed Settlement, nor may they be deemed adequately to represent Objectors and other Debenture Owners similarly situated.

E. The form of Notice issued pursuant to the proposed Settlement, although stipulated and determined as "fully and fairly describing the terms of the settlement and merger", in fact was inadequate, unfair, replete with 'buried facts", failed to comply with Rule 23 as amended, and omitted to state material facts concerning the matter which would have assumed actual significance in the deliberations of a reasonable Debenture Owner in determining his choice of action in the transaction.

F. The Stipulation and Agreement of Settlement is unlawful

and in violation of Sections 5(c) and 17(a) of the Securities Act of 1933, 15 U.S.C. 77(e)(c) and 15 U.S.C. 77q(a).

G. The Stipulation and Agreement of Settlement is unlawful and in violation of Sections 10(b), 13(d)(1), 13(e)(1), 14(d)(1), 14(d)(4), 14(e), and 29(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), 15 U.S.C. 78m(a)(1), 15 U.S.C. 78(m)(e)(1), 15 U.S.C.78n(d)(1), 15 U.S.C.78 n(d)(4), 15 U.S.C. 78n(e), and 15 U.S.C. 78cc(b), and in contravention of Rules 10b-5, 13d-1, 13e-2(e), 14d-1, and 14d-4 of the Securities and Exchange Commission.

H. The Stipulation and Agreement of Settlement is unlawful and in violation of the Trust Indenture Act of 1939, including, without being limited to, Sec. 306 thereof, 15 U.S.C. 77 fff.

I. The proposed Settlement, if approved and effective over the objections herein made, and the proposed merger consummated, would violate the provisions of Sec. 259 of the Delaware General Corporation Law, as respects Objectors and other Debenture Owners similarly situated.

J. The proposed Settlement, if approved and effective over the objections herein made, and the consummation of the proposed merger contemplated therein, would constitute a breach of the contract contained in the Debentures and the Indenture under the laws of the State of New York, as respects Objectors and other Debenture Owners similarly situated.

K. The proposed Settlement is unlawful and in violation of Section 401 of the Pennsylvania Securities Act of 1972, 70 P.S. §1-401, as respects Objectors and other Debenture Owners similarly situated who are residents of Pennsylvania.

L. The proposed Settlement is unfair and inequitable as respects Objectors and other Debenture Owners similarly situated because of the absence of discovery conducted on an adversary basis by lead counsel and co-counsel designated as representing the class of Debenture Owners. The proposed Settlement has no relation to the economic facts relevant to the case and there was not a fair recognition in the settlement negotiations of the liability of the defendants.

M. The Stipulation and Agreement of Settlement is illegal, voidable and unenforceable as respects Objectors and other Debenture Owners similarly situated, not only on the grounds set forth above in this Paragraph 5, but also because it is violative of the decisional law of the Court of Appeals of the Second Circuit, and public policy, which prohibit illegitimate and unjustifiable "freeze-outs" and elimination of minority common stock interests by and for the benefit of controlling persons, majority stockholders and fiduciaries, and a fortiori prohibit such proposed action where such would alter, impair, or adversely affect the rights of creditors who have not accepted.

EDWIN P. ROME
MORTON P. ROME
Attorneys for Morton P. Rome and Marjorie T. Rome, Trustees under Trust Agreement made November 22, 1954, for the benefit of Sally P. Rome, Objectors
Four Penn Center Plaza
Philadelphia, Penna. 19103
Telephone No. 215-569-3700

Of Counsel

BLANK, ROME, KLAUS & COMISKY
Four Penn Center Plaza
Phila., Pa. 19103
Telephone No. 215-569-3700

BRUCE A. HECKER
IRA POSTEL
SHEA, GOULD, CLIMENKO & CASEY
330 Madison Avenue
New York, N.Y. 10017
Telephone No. 212-661-3200

Dated: September 24, 1976

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF PHILADELPHIA :

The undersigned, MORTON P. ROME and MARJORIE T. ROME, Trustees under Trust Agreement made November 22, 1954 for the benefit of SALLY P. ROME, being duly sworn according to law, depose and say that the facts set forth in the foregoing Notice of Intention to Appear, Object and Show Cause Why the Proposed Settlement Should Not Be Approved are true and correct to their own knowledge, with the exception that the allegations set forth in Paragraph 5 thereof are, in accordance with the advice of their counsel, true and correct to the best of their knowledge, information and belief.

Morton P. Rome

MORTON P. ROME

Sworn to and Subscribed
Before me this 21st
day of September, 1976

Marjorie T. Rome

MARJORIE T. ROME

Trustees under Trust Agreement
made November 22, 1954 for the
benefit of Sally P. Rome

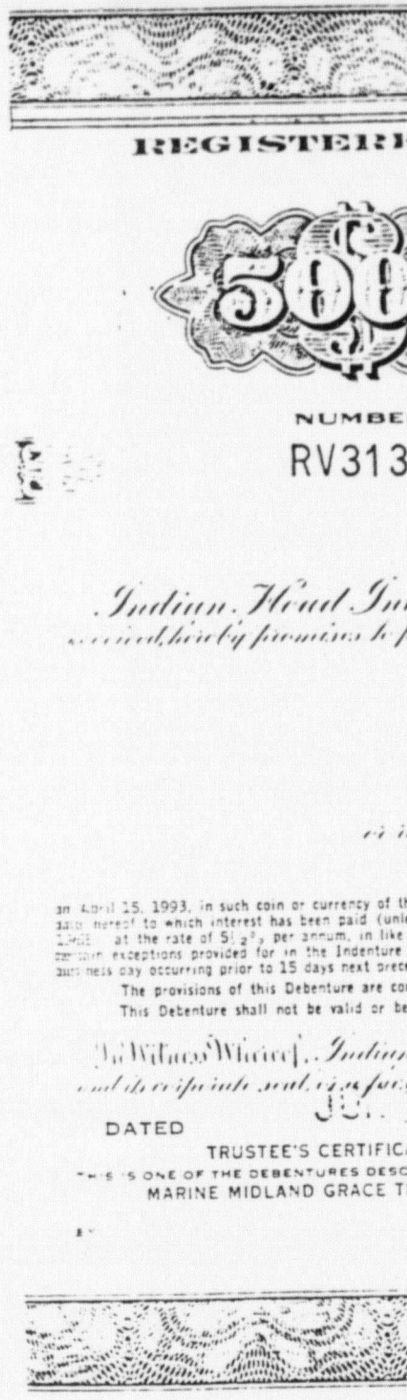
Sarah Spindle

Notary Public

Philadelphia

My Commission

EXHIBIT A - DEBENTURES ANNEXED TO FOREGOING NOTICE
(pp. 201a-206a)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RV313

Indian Head In

on April 15, 1993, in such coin or currency of t
said interest to which interest has been paid (unl
hereof at the rate of 5½% per annum, in like
exceptions provided for in the Indenture
business day occurring prior to 15 days next prec

The provisions of this Debenture are co
This Debenture shall not be valid or be

In Witness Whereof, Indian
and its corporate seal to be

DATED

TRUSTEE'S CERTIFIC
THIS IS ONE OF THE DEBENTURES DESC
MARINE MIDLAND GRACE T

REGISTERED

5000

NUMBER
RV3139

INDIAN HEAD INC.

REGISTERED

5000

NUMBER
RV3139

5½% CONVERTIBLE SUBORDINATED DEBENTURE DUE APRIL 15, 1993

Indian Head Inc., a corporation duly organized and existing under the laws of the State of Delaware (herein referred to as the "Company", for value received, hereby promises to pay to

-MORTON P ROME &
MARJORIE T ROME TR U/A
NOV 22 54 FBO SALLEY P ROME-

or registered assigns, at its agency in the Borough of Manhattan, The City of New York, State of New York,

FIVE THOUSAND DOLLARS

on April 15, 1993, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, and to pay interest thereon from the 15th day of April or October next preceding the date hereof to which interest has been paid (unless the date hereof is an April 15 or October 15 to which interest has been paid, in which case from the date hereof, or unless the date hereof is prior to October 15, 1968, in which case from April 15, 1968) at the rate of 5½% per annum, in like coin or currency, at said agency on the 15th day of April and the 15th day of October in each year, until payment of said principal sum has been made or duly provided for. Such interest will (subject to certain exceptions provided for in the Indenture hereinafter referred to) be paid to the holder of record of this Debenture, or the Debenture in exchange or substitution for which this Debenture shall have been issued, at the close of business of the last business day occurring prior to 15 days next preceding such April 15 or October 15.

The provisions of this Debenture are continued on the reverse hereof and such continued provisions shall for all purposes have the same effect as though fully set forth at this place.

This Debenture shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Trustee under the Indenture.

In Witness Whereof, Indian Head Inc. has caused this Debenture to be signed in its name by the facsimile signature of its President or one of its Vice Presidents and its corporate seal, or a facsimile thereof, to be impressed or imprinted hereon, attested by the facsimile signature of its Secretary or one of its Assistant Secretaries.

DATED JUN 22 '54

Indian Head Inc.

ATTEST: Robert J. Palmer SECRETARY.

BY [signature] PRESIDENT.

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

THIS IS ONE OF THE DEBENTURES DESCRIBED IN THE WITHIN-MENTIONED INDENTURE

MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK,
AS TRUSTEE

BY [signature]
AUTHORIZED OFFICER.

INDIAN HEAD INC.
INCORPORATED
1966
DELAWARE

201a

202a

INDIAN HEAD INC.

5½% CONVERTIBLE SUBORDINATED DEBENTURE DUE APRIL 15, 1993

This Debenture is one of a duly authorized issue of Debentures of the Company, designated as its 5½% Convertible Subordinated Debentures due April 15, 1993 (herein referred to as the "Debentures"), limited by the aggregate principal amount of $25,000,000, all issued or to be issued under and pursuant to an indenture, dated as of April 15, 1968 (herein referred to as the "Indenture"), duly executed and delivered by the Company to Marine Midland Grace Trust Company of New York, as Trustee (herein referred to as the "Trustee"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, duties and immunities thereunder of the Trustee and the Company and the nature and extent of the rights of the holders of the Debentures.

The indebtedness evidenced by the Debentures is, to the extent provided in the Indenture, subordinate and subject in right of payment to the prior payment in full of all Senior Indebtedness, as defined in the Indenture, and this Debenture is issued subject to the provisions of the Indenture, and each holder of this Debenture, by accepting the same, agrees to and shall be bound by such provisions.

Subject to the provisions of the Indenture, the holder hereof has the right, at his option, at any time prior to maturity (except that in case this Debenture shall be called for redemption before maturity, such right shall terminate at the close of business on the date fixed for redemption of this Debenture unless the Company shall default in payment of the redemption price) to convert this Debenture into fully paid and non-assessable shares of Common Stock of the Company (as constituted at the date of conversion) at the conversion rate of 25.974 shares of Common Stock for each $1,000 principal amount of Debentures (subject to adjustment, as of the conversion rate and the securities or other property issuable upon conversion, as may be required by the provisions of the Indenture), but only upon surrender of this Debenture for the purpose of such conversion to the Company at the office or agency to be maintained by the Company in the Borough of Manhattan, The City of New York, State of New York, and accompanied by (a) if required by the Company, a written instrument of transfer in blank and (b) if required by the Company, payment of an amount equal to the interest which would have been payable on the principal amount hereof (which has not been called for redemption during such period) to accompany the conversion and the same not been so surrendered for conversion all in accordance with the terms and provisions of the Indenture. No fractional shares are issuable upon any conversion, but in lieu thereof the Company shall pay therefor in cash as provided in the Indenture. There will be no adjustment in respect of interest or dividends upon conversion of this Debenture.

In case an Event of Default as defined in the Indenture, shall have occurred and be continuing, the principal of all the Debentures may be declared, and upon such declaration shall become, due and payable, and such declaration may in certain events be rescinded, in the manner, with the effect and subject to the conditions provided in the Indenture.

No reference herein to the Indenture and no provision of this Debenture or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest on this Debenture at the place, at the respective times, at the rate and in the currency herein prescribed.

The Indenture contains provisions permitting the Company and the Trustee, with the consent of the holders of not less than [illegible]% in aggregate principal amount of the Debentures at the time outstanding, evidenced as in the Indenture provided, (and in certain instances without such consent), to execute supplemental indentures adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or modifying in any manner the rights and obligations of the holders of the Debentures and of the Company; PROVIDED, HOWEVER, that no such supplemental indenture shall (i) extend the fixed maturity of any of the Debentures, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof, or alter or impair the right to convert the same into shares of Common Stock at the rates and upon the terms provided in the Indenture, without the consent of the holder of each Debenture so affected or (ii) reduce the aforesaid percentage of Debentures, the holders of which are required to consent to any such supplemental indenture, without the consent of the holders of all Debentures then outstanding. Any such consent by the holder of this Debenture shall be conclusive and binding upon such holder and upon all future holders and owners of this Debenture and of any Debenture issued in exchange herefor or in place hereof, irrespective of whether or not any notation of such consent is made upon this Debenture.

As provided in the Indenture, the Debentures may be redeemed, at the option of the Company, as a whole or from time to time in part, at any time upon the notice referred to below, at the following Regular Redemption Prices (expressed in percentages of the principal amount thereof), together, in each case, with interest accrued to the date fixed for redemption, if redeemed during the 12 months' period beginning April 15:

1968	105.50%	1978	102.75%
1969	105.22%	1979	102.47%
1970	104.95%	1980	102.20%
1971	104.67%	1981	101.92%
1972	104.40%	1982	101.65%
1973	104.12%	1983	101.37%
1974	103.85%	1984	101.10%
1975	103.57%	1985	100.82%
1976	103.30%	1986	100.55%
1977	103.02%	1987	100.27%

and if redeemed on or after April 15, 1988, at 100%.

The notice of redemption to the holders of Debentures to be redeemed shall be given by mailing a copy of such notice not later than the thirtieth day, and not earlier than the sixtieth day, before the date fixed for redemption to the registered holders of Debentures to be redeemed at their last addresses as they shall appear on the registration books of the Company, all as provided in the Indenture.

The Debentures are also subject to redemption in part through the operation of the sinking fund provided for in the Indenture on April 15, 1979 and on each April 15 thereafter to and including April 15, 1992, on notice as set forth above, at 100%, of the principal amount thereof, together, in each case, with interest accrued to the date fixed for redemption.

The Debentures are issuable as registered Debentures in denominations of $1,000 and any multiple thereof. This Debenture is transferable by the registered holder hereof, in person or by duly authorized agent or legal representative, on the books of the Company to be kept for that purpose at an agency to be maintained by the Company in the Borough of Manhattan, The City of New York, State of New York, upon surrender and cancellation of this Debenture and upon presentation of a duly executed written instrument of transfer, and thereupon a new Debenture or Debentures of authorized denominations for the same aggregate principal amount will be issued to the transferee or transferees in exchange hereafter, and this Debenture, with or without others, may in like manner be exchanged for one or more Debentures of other authorized denominations but of the same aggregate principal amount.

The Company, the Trustee, any paying agent, any conversion agent and any Debenture registrar may deem and treat the registered holder hereof as the absolute owner of this Debenture (whether or not this Debenture shall be overdue and notwithstanding any notice of ownership or writing hereon made by anyone other than the Company or any Debenture registrar) for the purpose of receiving payment hereof or on account hereof (subject to the provisions of the first paragraph appearing on the face hereof) and for all other purposes, and neither the Company nor the Trustee nor any paying agent nor any conversion agent nor any Debenture registrar shall be affected by any notice to the contrary.

No recourse shall be had for the payment of the principal of (or premium, if any) or the interest on this Debenture, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture or any indenture supplemental thereto, against any incorporator, stockholder, officer or director, past, present or future, as such, of the Company or of any predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law or equity, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issuance hereof, expressly waived and released by every holder or owner hereof, as more fully provided in the Indenture.

FOR CONVERSION USE ONLY

CONVERSION NOTICE

To Indian Head Inc.

The undersigned owner of this Debenture hereby irrevocably exercises the option to convert this Debenture or portion hereof below designated into shares of Common Stock of Indian Head Inc. in accordance with the terms of the Indenture referred to in this Debenture, and directs that the shares issuable and deliverable upon the conversion, together with any check in payment for fractional shares, be issued in the name of and delivered to the undersigned unless a different name has been indicated below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto.

Dated , 19 .

_____
Signature

FILL IN FOR REGISTRATION OF SHARES:

_____
NAME

_____
ADDRESS

Please print name and address (including zip code number)

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER

Portion to be converted (if less than all):

$ _____.000

The following abbreviations, when used in the inscription on the face of the within Debenture, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM — as tenants in common
TEN ENT — as tenants by the entireties
JT TEN — as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT — _____ Custodian _____
(Cust) (Minor)
under Uniform Gifts to Minors Act
(State)

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

_____

_____

_____

the within Debenture, and all rights thereunder, hereby irrevocably constituting and appointing

_____ Attorney

to transfer said Debenture on the books of the Company, with full power of substitution in the premises.

Dated: _____

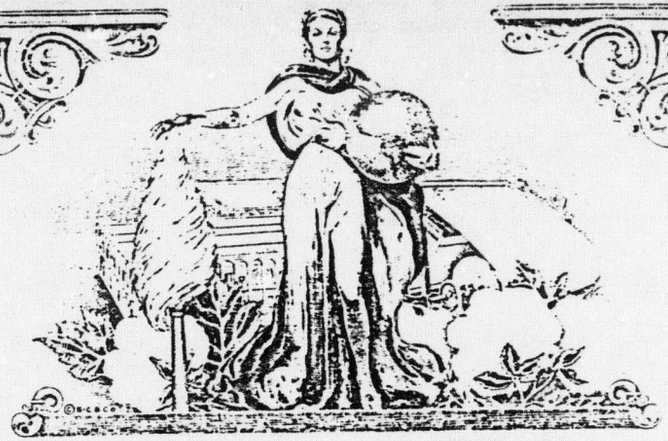
NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Debenture in every particular, without alteration or enlargement or any change whatever.

REGISTERED

10,000

NUMBER

RX 4307



INDIAN HEAD INC.

REGISTERED

10,000

NUMBER

RX 4307

5½% CONVERTIBLE SUBORDINATED DEBENTURE DUE APRIL 15, 1993

Indian Head Inc., a corporation duly organized and existing under the laws of the State of Delaware (herein referred to as the "Company"), for value received, hereby promises to pay to

RX 004307 MORTON P ROME & MARJORIE T ROME
0130 TP UA NOV 22 54 FBO SALLY P ROME
1070103412
ROME----
SALLP0100

CUSIP 454200 AA 4

or registered assigns, at the agency in the Borough of Manhattan, The City of New York, State of New York,

TEN THOUSAND DOLLARS

on April 15, 1993, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, and to pay interest thereon from the 15th day of April or October next preceding the date hereof to which interest has been paid (unless the date hereof is an April 15 or October 15 to which interest has been paid, in which case from the date hereof, or unless the date hereof is prior to October 15, 1968, in which case from April 15, 1968), at the rate of 5½% per annum, in like coin or currency, at said agency on the 15th day of April and the 15th day of October in each year, until payment of said principal sum has been made or duly provided for. Such interest will (subject to certain exceptions provided for in the Indenture hereinafter referred to) be paid to the holder of record of this Debenture, or the Debenture in exchange or substitution for which this Debenture shall have been issued, at the close of business of the last business day occurring prior to 15 days next preceding such April 15 or October 15.

The provisions of this Debenture are continued on the reverse hereof and such continued provisions shall for all purposes have the same effect as though fully set forth at this place.

This Debenture shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Trustee under the Indenture.

In Witness Whereof, Indian Head Inc. has caused this Debenture to be signed in its name by the facsimile signature of its President or one of its Vice Presidents and its corporate seal, or a facsimile thereof, to be impressed or imprinted hereon, attested by the facsimile signature of its Secretary or one of its Assistant Secretaries.

DATED 01/30/74

Indian Head Inc.

ATTEST: BY

SECRETARY. PRESIDENT.

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

THIS IS ONE OF THE DEBENTURES DESCRIBED IN THE WITHIN-MENTIONED INDENTURE.

MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK,

AS TRUSTEE

BY

AUTHORIZED OFFICER.

INDIAN HEAD INC. INCORPORATED 1966 DELAWARE

203a

INDIAN HEAD INC.

5½% CONVERTIBLE SUBORDINATED DEBENTURE DUE APRIL 15, 1993

This Debenture is one of a duly authorized issue of Debentures of the Company, designated as its 5½% Convertible Subordinated Debentures due April 15, 1993 (herein referred to as the "Debentures"), limited to the aggregate principal amount of $25,000,000, all issued or to be issued under and pursuant to an indenture, dated as of April 15, 1968 (herein referred to as the "Indenture"), duly executed and delivered by the Company to Marine Midland Grace Trust Company of New York, as Trustee (herein referred to as the "Trustee"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, duties and immunities thereunder of the Trustee and the Company, and of the rights of the holders of the Debentures.

The indebtedness evidenced by the Debentures is, to the extent provided in the Indenture, subordinate and subject in right of payment to the prior payment in full of all Senior Indebtedness, as defined in the Indenture, and this Debenture is issued subject to the provisions of the Indenture, and each holder of this Debenture, by accepting the same, agrees to and shall be bound by such provisions.

Subject to the provisions of the Indenture, the holder hereof has the right, at his option, at any time prior to maturity (except that in case this Debenture shall be called for redemption before maturity, such right shall terminate at the close of business on the second business day prior to the date fixed for redemption of this Debenture unless the Company shall default in payment due upon such redemption), to convert this Debenture into fully paid and non-assessable shares of Common Stock of the Company at the conversion rate of 25.974 shares of Common Stock for each $1,000 principal amount of Debentures, subject to such adjustment, if any, of the conversion rate and the securities or other property issuable upon conversion as may be required by the provisions of the Indenture, but only upon surrender of this Debenture, duly endorsed or assigned to the Company or in blank, at the office or agency to be maintained by the Company in the Borough of Manhattan, The City of New York, State of New York, for the purpose of such conversion (or in the manner and subject to the limitations set forth in the Indenture), and accompanied by all documentary stamps required by the Company or by a governmental charge imposed by law. Upon such surrender, if any Debenture is called for redemption, interest on such Debenture will cease to accrue from and after the date fixed for the payment of such interest by funds in an amount equal to the interest which would have been payable on the principal amount hereof (which has not been called for redemption during such period) to surrendered for conversion had the same not been so surrendered for conversion, all in accordance with the terms and provisions of the Indenture. No fractional shares are issuable upon any conversion, but in lieu thereof the Company shall pay, therefor in cash as provided in the Indenture. There will be no adjustment in respect of interest or dividends upon conversion of this Debenture.

In case an Event of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of all the Debentures may be declared, and upon such declaration shall become due and payable, and such declaration may in certain events be rescinded, in the manner, with the effect and subject to the conditions provided in the Indenture.

No reference herein to the Indenture and no provision of this Debenture or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest on this Debenture at the place, at the respective times, at the rate and in the currency herein prescribed.

The Indenture contains provisions permitting the Company and the Trustee, with the consent of the holders of not less than ____% in aggregate principal amount of the Debentures at the time outstanding, evidenced as in the Indenture provided, and in certain instances without such consent, to execute supplemental indentures adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or modifying in any manner the rights and obligations of the holders of the Debentures and of the Company; PROVIDED, HOWEVER, that no such supplemental indenture shall (i) extend the fixed maturity of any of the Debentures or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof, or alter or impair the right to convert the same into shares of Common Stock at the rates and upon the terms provided in the Indenture, without the consent of the holder of each Debenture so affected or (ii) reduce the aforesaid percentage of Debentures, the holders of which are required to consent to any such supplemental indenture, without the consent of the holders of all Debentures then outstanding. Any such consent by the holder of this Debenture shall be conclusive and binding upon such holder and upon all future holders and owners of this Debenture and of any Debenture issued in exchange hereof or in place hereof, irrespective of whether or not any notation of such consent is made upon this Debenture.

As provided in the Indenture, the Debentures may be redeemed, at the option of the Company, as a whole or from time to time in part, at any time, upon the notice referred to below, at the following Regular Redemption Prices (expressed as percentages of the principal amount thereof), together, in each case, with interest accrued to the date fixed for redemption, if redeemed during the 12 months' period beginning April 15:

1968	105.50%	1978	102.75%
1969	105.22%	1979	102.47%
1970	104.95%	1980	102.20%
1971	104.67%	1981	101.92%
1972	104.40%	1982	101.65%
1973	104.12%	1983	101.37%
1974	103.85%	1984	101.10%
1975	103.57%	1985	100.82%
1976	103.30%	1986	100.55%
1977	103.02%	1987	100.27%

and if redeemed on or after April 15, 1988, at 100%.

The notice of redemption to the holders of Debentures to be redeemed shall be given by mailing a copy of such notice not later than the thirtieth day and not earlier than the sixtieth day before the date fixed for redemption to the registered holders of Debentures to be redeemed at their last addresses as they shall appear on the register thereof kept of the Company, all as provided in the Indenture.

The Debentures are also subject to redemption in part through the operation of the sinking fund provided for in the Indenture on April 15, 1979 and on each April 15 thereafter to and including April 15, 1992, on notice as set forth above, at 100% of the principal amount thereof, together, in each case, with interest accrued to the date fixed for redemption.

The Debentures are issuable as registered Debentures in denominations of $1,000 and any multiple thereof. This Debenture is transferable by the registered holder hereof, in person or by duly authorized agent or legal representative, on the books of the Company to be kept for that purpose at an agency to be maintained by the Company in the Borough of Manhattan, The City of New York, State of New York, upon surrender and cancellation of this Debenture and upon presentation of a duly executed written instrument of transfer and thereupon a new Debenture or Debentures of like tenor and for authorized denominations for the same aggregate principal amount will be issued to the transferee in exchange therefor, and this Debenture, with or without others, may in like manner be exchanged for one or more Debentures of other authorized denominations but of the same aggregate principal amount.

The Company, the Trustee, any paying agent, any conversion agent and any Debenture registrar may deem and treat the registered holder hereof as the absolute owner of this Debenture (whether or not this Debenture shall be overdue and notwithstanding any notice of ownership or writing hereon made by anyone other than the Company or any Debenture registrar) for the purpose of receiving payment hereof or on account hereof (subject to the provisions of the first paragraph appearing on the face hereof), and for all other purposes, and neither the Company nor the Trustee nor any paying agent nor any conversion agent nor any Debenture registrar shall be affected by any notice to the contrary.

No recourse shall be had for the payment of the principal of (or premium, if any) or the interest on this Debenture, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture or any indenture supplemental thereto, against any incorporator, stockholder, officer or director, past, present or future, as such, of the Company or of any predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law or equity, or by the enforcement of any assessment or penalty or otherwise, all such liability, being, by the acceptance hereof and as part of the consideration for the issuance hereof, expressly waived and released by every holder or owner hereof, as more fully provided in the Indenture.

FOR CONVERSION USE ONLY

CONVERSION NOTICE

To Indian Head Inc.

The undersigned owner of this Debenture hereby irrevocably exercises the option to convert this Debenture or portion hereof below designated into shares of Common Stock of Indian Head Inc. in accordance with the terms of the Indenture referred to in this Debenture, and directs that the shares issuable and deliverable upon the conversion, together with any check in payment for fractional shares, be issued in the name of and delivered to the undersigned unless a different name has been indicated below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto.

Dated _____, 19__.

_____
Signature

FILL IN FOR REGISTRATION OF SHARES:

_____
NAME

_____
ADDRESS

_____
Please print name and address (including zip code number)

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER

Portion to be converted (if less than all):

$_____,000

The following abbreviations, when used in the inscription on the face of the within Debenture, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM — as tenants in common
TEN ENT — as tenants by the entireties
JT TEN — as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT — _____ Custodian
(Cust) (Minor)
under Uniform Gifts to Minors Act
(State)

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

_____

_____

_____

the within Debenture, and all rights thereunder, hereby irrevocably constituting and appointing

_____
Attorney

to transfer said Debenture on the books of the Company, with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Debenture in every particular, without alteration or enlargement or any change whatever.

BEST COPY AVAILABLE

REGISTERED

$10,000

NUMBER

RX 4607

INDIAN HEAD INC.

REGISTERED

$10,000

NUMBER

RX 4607

5½% CONVERTIBLE SUBORDINATED DEBENTURE DUE APRIL 15, 1993

Indian Head Inc., a corporation duly organized and existing under the laws of the State of Delaware (herein referred to as the "Company"), for value received, hereby promises to pay to

RX 004607
0401
1070136560
ROME-----
SALLP0100

MORTON P ROME & MARJORIE T ROME
TR UA NOV 22 54 FBO SALLY P
ROME

CUSIP 454200 AA 4

or registered assigns, at its agency in the Borough of Manhattan, The City of New York, State of New York,

TEN THOUSAND DOLLARS

on April 15, 1993, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, and to pay interest thereon from the 15th day of April or October next preceding the date hereof to which interest has been paid (unless the date hereof is an April 15 or October 15 to which interest has been paid, in which case from the date hereof, or unless the date hereof is prior to October 15, 1968, in which case from April 15, 1968), at the rate of 5½% per annum, in like coin or currency, at said agency on the 15th day of April and the 15th day of October in each year, until payment of said principal sum has been made or duly provided for. Subject to certain exceptions provided for in the Indenture hereinafter referred to, interest will be paid to the holder of record of this Debenture, or the Debenture in exchange or substitution for which this Debenture shall have been issued, at the close of business of the last business day occurring prior to 15 days next preceding such April 15 or October 15.

The provisions of this Debenture are continued on the reverse hereof and such continued provisions shall for all purposes have the same effect as though fully set forth at this place.

This Debenture shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Trustee under the Indenture.

In Witness Whereof, Indian Head Inc. has caused this Debenture to be signed in its name by the facsimile signature of its President or one of its Vice Presidents and its corporate seal or a facsimile thereof to be impressed or imprinted hereon, attested by the facsimile signature of its Secretary or one of its Assistant Secretaries.

DATED 04/21/73

Indian Head Inc.

ATTEST: BY

SECRETARY. PRESIDENT.

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

THIS IS ONE OF THE DEBENTURES DESCRIBED IN THE WITHIN-MENTIONED INDENTURE.

MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK,

AS TRUSTEE

BY

AUTHORIZED OFFICER.

INDIAN HEAD INC. INCORPORATED 1966 DELAWARE

205a

INDIAN HEAD INC.

5½% CONVERTIBLE SUBORDINATED DEBENTURE DUE APRIL 15, 1993

This Debenture is one of a duly authorized issue of Debentures of the Company, designated as its 5½% Convertible Subordinated Debentures due April 15, 1993 (herein referred to as the "Debentures"), limited to the aggregate principal amount of $25,000,000, all issued or to be issued under and pursuant to an indenture, dated as of April 1, 1968 (herein referred to as the "Indenture"), duly executed and delivered by the Company to Marine Midland Grace Trust Company of New York, as Trustee (herein referred to as the "Trustee"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, duties and immunities thereunder of the Trustee and the Company and the nature and extent of the rights of the holders of the Debentures.

The indebtedness evidenced by the Debentures is to the extent provided in the Indenture, subordinate and subject in right of payment to the prior payment in full of all Senior Indebtedness, as defined in the Indenture, and this Debenture is issued subject to the provisions of the Indenture, and each holder of this Debenture, by accepting the same, agrees to and shall be bound by such provisions.

Subject to the provisions of the Indenture, the holder hereof has the right, at his option at any time prior to maturity (except that, in case this Debenture shall be called for redemption before maturity, such right shall terminate at the close of business on the second business day prior to the date fixed for redemption of this Debenture unless the Company shall default in payment due upon such redemption), to convert this Debenture into fully paid and non-assessable shares of Common Stock of the Company at the conversion rate of 25.474 shares of Common Stock for each $1,000 principal amount of Debentures (subject to such adjustment, if any, of the conversion rate and the securities or other property issuable upon conversion as may be required by the provisions of the Indenture, but only upon surrender of this Debenture for the purpose of such conversion to the Company at the office or agency to be maintained by the Company in the Borough of Manhattan, The City of New York, State of New York, and accompanied (x) if required by the Company, by a proper assignment hereof in blank and (y) if surrendered for conversion after the record date for payment of interest on Debentures and before the date for payment of such interest, by funds in an amount equal to the interest which would have been payable on the principal amount hereof (which has not been called for redemption during such period) so surrendered for conversion had the same not been so surrendered for conversion, all in accordance with the terms and provisions of the Indenture. No fractional shares are issuable upon any conversion, but in lieu thereof the Company shall pay thereon in cash as provided in the Indenture. There will be no adjustment in respect of interest or dividends upon conversion of this Debenture.

In case an Event of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of all the Debentures may be declared, and upon such declaration shall become due and payable, and such declaration may in certain events be rescinded, in the manner, with the effect and subject to the conditions provided in the Indenture.

No reference herein to the Indenture and no provision of this Debenture or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest on this Debenture at the place, at the respective times, at the rate and in the currency herein prescribed.

The Indenture contains provisions permitting the Company and the Trustee, with the consent of the holders of not less than sixty-six and two-thirds per cent in aggregate principal amount of the Debentures at the time outstanding, evidenced as in the Indenture provided, (and in certain instances without such consent), to execute supplemental indentures adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or modifying in any manner the rights and obligations of the holders of the Debentures and of the Company; PROVIDED, HOWEVER, that no such supplemental indenture shall (i) extend the fixed maturity of any of the Debentures or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof, or alter or impair the right to convert the same into shares of Common Stock at the rates and upon the terms provided in the Indenture, without the consent of the holder of each Debenture so affected, or (ii) reduce the aforesaid percentage of Debentures, the holders of which are required to consent to any such supplemental indenture, without the consent of the holders of all Debentures then outstanding. Any such consent by the holder of this Debenture shall be conclusive and binding upon such holder and upon all future holders and owners of this Debenture and of any Debenture issued in exchange herefor or in place hereof, irrespective of whether or not any notation of such consent is made upon this Debenture.

As provided in the Indenture, the Debentures may be redeemed, at the option of the Company, as a whole or from time to time in part, at any time, upon the notice referred to below, at the following Regular Redemption Prices (expressed in percentages of the principal amount thereof), together, in each case, with interest accrued to the date fixed for redemption, if redeemed during the 12 months' period beginning April 15:

1968	105.50%	1978	102.75%
1969	105.22%	1979	102.47%
1970	104.95%	1980	102.20%
1971	104.67%	1981	101.92%
1972	104.40%	1982	101.65%
1973	104.12%	1983	101.37%
1974	103.85%	1984	101.10%
1975	103.57%	1985	100.82%
1976	103.30%	1986	100.55%
1977	103.02%	1987	100.27%

and if redeemed on or after April 15, 1988, at 100%.

The notice of redemption to the holders of Debentures to be redeemed shall be given by mailing a copy of such notice not later than the thirtieth day, and not earlier than the sixtieth day, before the date fixed for redemption to the registered holders of Debentures to be redeemed at their last addresses as they shall appear on the registration books of the Company, all as provided in the Indenture.

The Debentures are also subject to redemption in part through the operation of the sinking fund provided for in the Indenture on April 15, 1973 and on each April 15 thereafter to and including April 15, 1992, on notice as set forth above, at 100% of the principal amount thereof, together, in each case, with interest accrued to the date fixed for redemption.

The Debentures are issuable as registered Debentures in denominations of $1,000 and any multiple thereof. This Debenture is transferable by the registered holder hereof in person or by duly authorized agent or legal representative, on the books of the Company to be kept for that purpose at an agency to be maintained by the Company in the Borough of Manhattan, The City of New York, State of New York, upon surrender and cancelation of this Debenture and upon presentation of a duly executed written instrument of transfer, and thereupon a new Debenture or Debentures of authorized denominations for the same aggregate principal amount will be issued to the transferee or transferees in exchange hereafter; and this Debenture, with or without others, may in like manner be exchanged for one or more Debentures of other authorized denominations but of the same aggregate principal amount.

The Company, the Trustee, any paying agent, any conversion agent and any Debenture registrar may deem and treat the registered holder hereof as the absolute owner of this Debenture (whether or not this Debenture shall be overdue and notwithstanding any notice of ownership or writing hereon made by anyone other than the Company or any Debenture registrar) for the purpose of receiving payment hereof or on account hereof (subject to the provisions of the first paragraph appearing on the face hereof) and for all other purposes, and neither the Company nor the Trustee nor any paying agent nor any conversion agent nor any Debenture registrar shall be affected by any notice to the contrary.

No recourse shall be had for the payment of the principal of (or premium, if any) or the interest on this Debenture, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture or any indenture supplemental thereto, against any incorporator, stockholder, officer or director, past, present or future, as such, of the Company or of any predecessor or successor corporation, whether by reason of any constitution, statute or rule of law or equity, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issuance hereof, expressly waived and released by every holder or owner hereof, as more fully provided in the Indenture.

CONVERSION NOTICE

FOR CONVERSION USE ONLY

To Indian Head Inc.

The undersigned owner of this Debenture hereby irrevocably exercises the option to convert this Debenture or portion hereof below designated into shares of Common Stock of Indian Head Inc. in accordance with the terms of the Indenture referred to in this Debenture, and directs that the shares issuable and deliverable upon the conversion, together with any check in payment for fractional shares, be issued in the name of and delivered to the undersigned unless a different name has been indicated below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto.

Dated , 19 .

Signature

FILL IN FOR REGISTRATION OF SHARES:

NAME

ADDRESS

Please print name and address (including zip code number)

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER

Portion to be converted (if less than all):

$,000

The following abbreviations, when used in the inscription on the face of the within Debenture, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM — as tenants in common
TEN ENT — as tenants by the entireties
JT TEN — as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT — Custodian (Cust) (Minor) under Uniform Gifts to Minors Act (State)

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

the within Debenture, and all rights thereunder, hereby irrevocably constituting and appointing

Attorney

to transfer said Debenture on the books of the Company, with full power of substitution in the premises.

Dated:

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Debenture in every particular, without alteration or enlargement or any change whatever.

TRANSCRIPT OF RECORD OF PROCEEDINGS DATED OCTOBER 13, 1976

gl:mg 1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

NOV 19 1976
S.D. OF N.Y.

- - - -

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APPEARANCES (continued):

SHEARMAN & STERLING, Esqs.,
Attorneys for Defendant Thyssen-Bornemisza
ROBERT BLANC, Esq.,
ARNE HOVDESVEN, Esq.,
of Counsel

RICHARD J. CUTLER, Esq.,
Attorney for Defendant Indian Head

CRAVATH, SWAINE & MOORE, Esqs.,
Attorneys for the Individual Defendants
ROBERT ROSENMAN, Esq.,
ANTHONY A. DEAN, Esq.,
of Counsel

SHEA, GOULD, CLIMENKO & CASEY, Esqs.,
Attorneys for Objector
BRUCE A. HECKER, Esq.,
and
BLANK, ROME, KLAUS & COMISKY, Esqs.,
EDWIN P. ROME, Esq.,
of Counsel

GARWIN & BRONZAFT, Esqs.,
Attorneys for Murray J. Rosen
BERTRAM BRONZAFT, Esq.,
of Counsel

...

MR. HECKER: I'd like to move the admission for the purpose of this motion Mr. Edwin Rome and Mr. Morton Rome, members of the Pennsylvania bar.

My name is Bruce Hecker, of Shea, Gould, Climenko, attorneys of record, for the objector.

THE COURT: All right. Your motion is granted.

Gentlemen, we are glad to have you here.

Who wants to begin?

MR. KLEIN: Your Honor, as the proponent of the settlement, I'd like to introduce myself. I am William Klein of Austrian, Lance & Stewart.

To my left is Don Landis and Harvey Sklaver, who represent Shamrock Corporation, and to my right is Frank Weinstein from Weistein & Levinson, who represent Mr. Weinberger on the Weinberger action.

First I'd like to make a brief statement.

As I was going through the cases and seeing the amount of documents that we have given your Honor, I was struck by the contrast between the statements in most of the decisions to the effect that a settlement is not supposed to be a trial, and with the fact that we do present to you virtually all of the evidence on liability and on damages and the law which we would present on a trial.

That is really the only way the Court can make a decision. As a result we have tried to furnish you with what we think is a complete record.

Another point I'd like to make is, I think that the class action and class action settlement may well be one of the most serious and difficult burdens that a lawyer has almost in any field. It is like being a trustee for a minor, or like being a trustee in a bankruptcy.

Before we come to the responsibility that, of course, we have to the Court, there is an awesome responsibility to these thousands of stockholders who never heard of Austrian, Lance & Stewart and never heard of Klein, and may never have heard of the case or the facts.

We take that responsibility very, very seriously, so that before we reach a settlement, we have in mind that here are these people far away, and I always ask myself, how would I feel if I was in Winnetka or Los Angeles and some lawyer in New York was settling a substantial financial interest of mine.

The answer is, I would want to be very, very sure that this fellow was objective and knew his business.

Then, of course, there is a responsibility that we have to the Court; although the decision is yours, the cases are replete with the fact that you rely very heavily

on lead counsel, and we are very, very mindful of that kind of responsibility, and we entered into these settlement negotiations and we concluded them in that spirit.

I think that we all feel that this is an unusually fair settlement, and the response of the stockholders that we have had up to now I think indicates that.

Before I go into other questions we have briefed this very thoroughly. Judge, would you want a brief summary or do you feel that all sides have --

THE COURT: Before I answer that question, Mr. Klein,I have got to deal with a note from the jury. I think it will just take me a couple of minutes.

(Pause)

MR. KLEIN: Do you think it would be desirable to make a brief summary of the litigation and the settlement or do you think the record is clear in terms of the documents, et cetera?

THE COURT: I don't think I need a summary of that. I think I would like a brief statement of your position as to why you think this is a good settlement.

MR. KLEIN: Yes. I think that if your Honor doesn't object, I have some problems with my legs. Would you mind if I sat down?

THE COURT: Not at all.

MR. KLEIN: Thank you.

I think that if you really get to the heart of the entire litigation you have a situation which is different from that in the normal kind of a stockholders securities fraud case: somebody has been diddling with the books or padding accounts receivables or what have you.

What you are dealing with here is a minority interest that has been frozen in by a majority. There is no law that says a man can't buy 90% of a company. There are indeed companies on the Exchanges where the majority stockholder owns 80% or more and that situation may go on for a long time.

What happened here first was that the majority stockholder acquired control of Indian Head but never sent notice to the convertible debenture owners who had a right to convert to common stock, and so they didn't know anything about it.

At that time, since the debentures were trading in the area of 60 or 65 and the tender offer, $27 tender offer, was equivalent to $701 for the debenture, obviously such a notice was important. But the debenture holders didn't get it.

As a result, when the majority stockholder acquired control, the common stock was delisted, the debentures were delisted, and the price of the debentures plummeted I

think immediately after to something like 42. It is traded in hundreds but transmitted in thousands, which is the equivalent of 425 or 450 in a very thin market if anybody would buy it. And then the big issue here I think is the fact that all of the security holders were then locked in with a controlled stockholder in a market that was thin and really conditioned by the fact that here was this big majority stockholder, and no way to get out.

I think, aside from the fact that the terms are fair, $32, and we have gone through the elements in our papers, that $32 for the common stock compared to the $27 tender offer, but without being an expert like Mr. Whitman, is obviously a fair price on all terms to get out.

I think really the name of the game is for the security holders to get out at a fair price, and for the warrants, the same is true. And the warrants present a tricky problem because the question of a valuation of a warrant, which is a gamble, is a tricky one.

What is a warrant worth? If a warrant is exercisable at $30 and the trading price is $30, the company took the position the warrant wasn't worth anything, although it had 14 years to run. So that here where the warrant is convertible into, if they wanted to exercise their option, they could get a $32 which meant they would make $2, where

the settlement provides for $4, and as we have conceded, the legal issues are great indeed. That seems to be very fair, I think, your Honor.

Another obviously extremely important factor is that this part of the litigation on behalf of the common stock, the warrants the debentures, arose as a result of the attempt to merge and the proposed merger plan of September 11. But that was withdrawn on March 4, and in terms of the legal situation, to some extent we were mooted.

To a very substantial extent the right of the convertible debenture holders was still the same. We claim that his debenture will be breached, we claim that the company didn't have any right.

If the 90% man wants to acquire 100% when there are convertible debentures out, part of the price ought to be that he should pay either the full thousand dollar face amount or the redemption price. That was our argument. But there was nothing to argue against because you couldn't compel a company to make a merger plan.

We hoped we would be able to do it but you would have to come into court and make that argument if the settlement negotiations had failed because we were then in the posture where there was nothing on the table and we continued the freeze.

THE COURT: Is the reason why the merger was, the first plan was withdrawn, is that significant?

MR. KLEIN: I think it is very significant. We think it was withdrawn because we brought action. We had a hearing before your Honor scheduled for March 4th on a preliminary injunction to enjoin the hearing. The Marshall and Green cases had just then come out. They came out, I had read them-- it was a marvelously fortuitous coincidence for which I shall be forever grateful.

I think those factors obviously must have played a part. I'm not in the minds of Indian Head but I think they issued a press release in which they said it was the Marshall and Green cases.

Does that answer your question, your Honor?

THE COURT: Yes, go ahead.

MR. KLEIN: So then we come to the question as to the convertible debentures, and as I have indicated, the convertible debentures are redeemable voluntarily by the company for $1033.

Our claim was that either the indenture was breached, in which case there was a default, and a thousand dollar plus interest was due, or there was an obligation to redeem. So whether you are talking about 1033 or a thousand dollars, you are talking about-- when you talk about $844,

you are talking about a discount of somewhere between 16% and 18%, for getting paid now. To my mind - I stress it - I stress it in our answer to the objectant, from Judge Weinfeld's opinion in Mopac, which I think is very significant -- in Mopac, you had a Class A stock and a Class B stock. The Class A stock had all the voting power and it was derived from the former creditors of the company. The Class B stock had very little voting power and it was derived from the former common stockholders, and they were constantly at loggerheads. There was constant litigation. And Judge Weinfeld pointed out in the Levin case that one of the factors, first the settlement has to be fair. But having found the settlement to be fair, an important factor was that the litigation solve the impasse.

And here, this settlement frees up the minority interest, and tome that is an extremely important factor; not to free it up at any price, but to free it up at a fair price. We think all the prices are fair and the time element here, your Honor, as your Honor will see from the letter in our papers, and we sent you a copy yesterday of the letter from David J. Green, these are people who own, I think, in the aggregate of close to $800,000 of debentures; how important it is to be paid and to be paid as quickly as possible, because -- and I think it is important to note,

when I was before Judge Weinfeld in the Tally case, what were we talking about? We were talking about an unfair merger. We said that the stockholders didn't get enough money, that really the only issue was to give them more money, more money with interest can come at any time. There was no rush in getting a decision on that.

In this case you are not talking about giving a fellow more money. You are talking about freeing him up. You are talking about giving him money now, and every day counts because he can use the money, and he can take the money and invest it.

We would hope we could get a judgment. You better believe it. We absolutely hope that we ought to be able to get a judgment of $1000 or $1033, but we don't know when.

We think that would be a very difficult question, and we think that any debenture holder, and we have the responsibility to the debenture holders, and they think they ought to have $844.10 today and to take the chance of getting a judgment a year or two from now with appeals, et cetera. It seems tome on taking into account the economics, taking into account the market realities, taking into account the fact that there was no litigation, to a substantial extent it was mooted, and in order to establish --

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I don't know what you could do for the common stockholder in that circumstance but in order to establish the claim for [illegible] debentures and also for the warrants - because the warr[illegible]tholders made the claim that it was a breach of the warrant agreement and therefore they were entitled to be paid out - that would take a lot of doing to establish that, your Honor.

I think merely the statement, in the light of the law, the Green case, of course, certiorari has been granted by the United States Supreme Court. We don't know where that stands. Therefore, I think that on every basis this is-- and it is net, I must emphasize that -- I think the fact that it is net is extremely important, and one matter that I think may be important to some that has been troublesome to me, that counsel for the defendants have authorized me to state on the record, and that is in the course of the negotiations we asked that the interest on the convertible debentures be accrued, and the company flatly refused. I'm not sure really why. I guess it is money. They refused. And they said, after all, the indenture doesn't provide for accrual --

THE COURT: The interest on the convertible debentures should be accrued in what event?

MR. KLEIN: From the time the settlement

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agreement was made, say, for example, or from the time the settlement was approved, until the time payment is actually made.

They refused to do that.

I am now authorized by the company to state that they will pay interest accrued from the last payment date, so that, for example, if your Honor were to approve the settlement on November 15, the company was to merge on the 20th, and a deposit of the indenture fund were to be made on the 22nd, interest was to be paid into the escrow fund from the 1st of October to the 22nd of November or whatever that date is that they would pay into the escrow fund.

And if I am wrong, I'm sure Mr. Hovdesven will correct me.

One final word with regard to the objectant. The objectant says, and he is a lawyer, the same thing we sa with a difference. He says that he has got a right to convert into common stock for the life of the debenture.

We argued that too. The difference between us is he says you got it so absolutely, so certainly that in effect he says you ought to have your head handed to you to settle for one penny less.

Your Honor, the cases are clear to the contrary,

and not only are the cases clear to the contrary, we have in our papers from Moody's a listing showing two companies where the convertible debentures, where the company was merged for cash, the common stock was paid cash, the convertible debentures had of course been converted to common stock, and after the merger, the convertibles were convertible into cash just as here under a section very, very similar to paralleling 506 of our indenture.

They are still listed on the Stock Exchange. That is still true. I have here for your Honor from Section 506 of the Commercial Solvents Corporation, which was one of those two corporations from the indenture which your Honor can examine and I think we would like to mark it as an exhibit. We have the whole indenture of Commercial Solvents.

We have listed another case where up to now I haven't been able to get the indenture but I am informed the provisions are the same. This will rise under the Trust Agreement Act, and although the law firms put in different words basically they are the same and the covering principles are remarkably the same. Not only as we have indicated does the law state that a conversion in cash follows under the Boned case, but also in practice it has followed.

I would like to make one final point with regard

to the objection.

THE COURT: You mean the objection generally?

MR.KLEIN: Well, it only has the one objection. There is one objection from a lawyer and his wife who are trustees--

THE COURT: No, I meant, Mr. Klein, do you mean to their objection generally or are you telling me about this last point?

MR. KLEIN: I think they only have one objection; although the objection is clothed in eleven points, it begins and ends and continues on until the end on the basis that they have an absolute contract right to convert into common stock, as I understand it.

The point I wanted to make with regard to the objection overall is that I expressed in my papers that Morton Rome is a lawyer, because it seemed tome that was significant, and I also stressed that he is represented by his brother who is a lawyer, because it seemed to me that was significant.

But I want to emphasize that even though Mr. Rome is a lawyer and even though he is represented by his brother, and even though he bought $10,000 worth of debentures after this settlement was approved, and even though he has been in touch with me and had ample opportunity to

object, then obviously it should be sustained, and even though I have had a lot of experience and I have been effective in other cases, it doesn't matter. If I have done a bad job here, then the settlement should be disapproved.

Your Honor, I'd like to complete the record if I may. Mr. Whitman is here, if you would like to question him. I have the original of Mr. Whitman's opinion of October 9, 1976, which I'd like to mark as Exhibit A.

(Handing)

MR. BLANC: Your Honor, if I may --

MR. KLEIN: Would you just hold it one minute more for some more exhibits?

THE COURT: Let's mark this Plaintiff's Exhibit 1.

xx (Plaintiff's Exhibit 1 marked for identification)

MR. KLEIN: Your Honor, the original of the David J. Green letter of October 1, 1976, a copy of which we submitted to you, we would like to mark as Exhibit 2.

THE COURT: Plaintiff's Exhibit 2.

xx (Plaintiff's Exhibit 2 marked for identification)

MR. KLEIN: Your Honor, I have a conformed copy

that the Chase Manhattan Bank as trustee furnished me of the Commercial Solvents indenture.

Do you feel it would be useful to mark this?

THE COURT: Yes, Plaintiff's Exhibit 3.

xx (Plaintiff's Exhibit 3 marked for identification)

MR. KLEIN: For your Honor's convenience, and I don't think we have to mark it, I have a copy of 506 of the Commercial Solvents indenture which parallels our 506.

THE COURT: Fine.

Mr. Klein, maybe there is something in the papers that I have which indicates this. How many objections have you received?

MR. KLEIN: Only one. Only the objection of Mr. Rome, I believe. There was an opt-out. When we say only one, a Mr. Tussio, who I think has over a thousand shares of common stock whom I talk to from time to time, wrote a letter. He was very indignant because the average price that he paid for his common stock was $43, I think, or $43.50, I think we have annexed that to our papers. He felt that he should get his money out.

THE COURT: How about opt-outs? Is it in the papers?

MR. KLEIN: Yes, but we might as well put it on

the record, your Honor.

At pags 9 and 10 of my affidavit which is now subject to added communications, we state that the owners of 1,240,000 dollars in debentures communicated with us and that 1,212,000, or 1,212 out of 14,295 indicated acceptance.

We now have David J. Green, who wrote us for 178 more. 27 opted out. Mr. Taylor tells me that he got a letter today which would be untimely anyway but from somebody who seemed to indicate--

MR. TAYLOR: He wants to hold his bond, that's all.

MR. KLEIN: That of course is the point of the settlement, that he can hold it and he can get his interest from 1993 and if at any time he wants to change his mind and convert, he will get $833 in cash. The difference between the 833 conversion cash and the 844 dollar settlement cash for the debentures is that the conversion cash is based on the $32 a share for the common stock, while the settlement price is a little bit more than $32. It would come to $32.50.

In addition to the 27 who opted out, Mr. Rome has objected. So he is really the only objectant.

There is a letter, we annexed it to our papers, from a woman who said that she wouldn't sell a $1000 bond

for $844.16.

I don't know whether that constitutes an opt-out. Out of the 585,386 shares of publicly held common stock, the owners of 4,851 shares communicated with us. The owners of 3271 opted out, and Mr. Tussio, who owned 1050, objected. Of the 349,467 publicly held warrants, the owners of 9070 communicated and all indicated acceptance and there were no objections and no opting out.

THE COURT: All right, Mr. Blanc.

MR. BLANC: Robert Blanc of Shearman & Sterling representing the Thyssen Group of defendants.

Thyssen-Bornemisza Inc. agrees to pay somewhat over $4 million above what it was willing to pay in March of this year, which we thought was a fair offer. We are perhaps more delighted to be paying the money than Mr. Klein's clients are to be receiving it. But there is no question that this proposed settlement is fair, reasonable and adequate to all of the classes, even more so than fair, reasonable and adequate.

Your Honor knows the history of the case. I'm not going to detail how we found ourselves defendants within a six-month period to three separate lawsuits cumulatively on behalf of all the classes beginning in December 1974, ending with the filing of the Shamrock case in April

of 1975. And your Honor, of course, is aware of the expensive motion practice which has occurred and the simultaneous motions for summary judgment that were pending before your Honor at the time the settlement was negotiated.

It has always been our view that Mr. Klein's case on behalf of the debenture holders, as far as the tender offer was concerned, was not a strong one. We felt the tender offers were both proper under any interpretation of the indenture governing the rights of the debenture holders under the securities laws and we felt that the claims of the warrantholders likewise could not be recognizable either under the warrant agreement nor under federal law nor state law for that matter.

During the time our motions were pending, Thyssen-Bornemisza sought to gain control of 100% of Indian Head; As Mr. Klein said on February 11 of this year, announced that on March 19 it intended to undertake a merger of Indian Head into a subsidiary of Thyssen-Bornemisza, Inc. under Delaware law. That was on February 11.

On February 3, the Second Circuit of Appeals announced its holding in the Marshall case, Marshall v. AFW Fabric Corp. There, of course, a denial of the preliminary injunction was reversed on the ground that controlling insiders who had previously sold stock to the public at a

high price and who now proposed to buy it back from the public at a low price could not do so under the vehicle of a Delaware merger without violating Section 10b-5 under the Exchange Act.

We saw no real problem with the Marshall case. Marshall pure and simple were not our facts, and as a result it did not cause us grave concern.

On February 18, the Second Circuit followed its previous decision with a different panel deciding Green v. Santa Fe Industries. But in that case there was no prior issuance of stock to the public by the controlling shareholders.

The Court nevertheless found that the lack of any "justifiable business purpose" conjoined with a lack of prior opportunity to contest the merger and allegations of an unfair price to the minority stayed a claim under Rule 10b-5.

Where we hadn't seen any real problems with Marshall, we saw several real problems in Green, not because we thought we were liabile or had done anything that was in violation of law, but because it was rather difficult to understand what the Court was talking about in Green.

The Court seemed to say we couldn't merge without having a justifiable business purpose. It didn't quite

tell us what that was and we did not know what it meant.

The Court also said that an unfair merger price raised a claim, albeit not by itself, under Rule 10b-5 and it was not just an issue in a Delaware appraisal proceeding.

We did not know what the new federal standard of an unfair merger price was going to be. Mr. Klein saw those problems also, perhaps coincidentally, as he said. He greeted us on February 20, two days after the Green decision, with a motion for preliminary injunction to prevent us from going forward with the merger which was then pending a month away. And, of course, as this Court knows, on March 4 we withdrew the merger proposal.

The reason is relatively simple. The legal standards enunciated in Green were unclear. We thought that we were in a splendid position to merge. We thought we had an abundantly fair merger and we had expert opinion to support that.

Mr. Klein has indicated that he consulted expert opinion and that his expert opinion we now know supported us. But we didn't know where we stood. We knew one thing was certain: We went through with the hearing on the preliminary injunction. Whatever decision of this Court was issued, the loser was going to appeal, in view of the Second Circuit decision; that was inevitable. That meant

a delay of decision inevitably in the Second Circuit, probably remanded if the Second Circuit wished to adduce more facts to help it reach a conclusion as to what a justifiable business purpose was or what an unfair price was.

We saw the potential for great delay and from a situation where we had genuine plans -- when I am speaking of "we" here, of course Thyssen-Bornemisza, Inc. had genuine buinsess purposes for planning that merger, that delay was highly prejudicial. So we entered into settlement negotiations with Mr. Klein and the other counsel.

And as your Honor is aware from the papers, I think, I won't detail the particular benefits under the settlement,but in our effort to proceed with our business plans, we think we have been generous.

We think we have made payments which are above what would be cognizable by a court of law and we think that they are in all events fair and reasonable and adequate.

We have consulted with an expert at this time who has told us that at the present time, not as of last February or last March, but at the present time, compared to what security holders of comparable companies have been receiving in offers which can be characterized as similar to this, this is a generous settlement; not merely fair, but

generous.

We submit that it is fair, reasonable and adequate, your Honor, and ask for your Honor's approval.

THE COURT: Is there any other defendant?

MR. WEINSTEIN: My name is Frank Weinstein of the firm of Weinstein & Levinson in the Weinberger action.

I desire to point out briefly that this settlement is fair and adequate. I pointed out in my memorandum some of the undisputed facts.

The debenture bonds take $1000 in principal and get 5-1/2% interest. At the end of the year they get $55 in interest. If the debenture holders elect to take the cash, $844, they can take that $844 and invest it in triple A bonds and according to today's newspapers, your Honor is naturally familiar with it, they can get triple A bonds and get not less than 8% interest, with the result of not getting $55 a year, they will get $12 a year more per thousand dollars or $67.

The Romes who object claim they are not getting a fair shake. If they get $844 and invest it in a triple A bond they will get $67 or $12 more per year on each $1000 bond at 8%. They have $25,000 in bonds, 25 times 12, they will get $300 a year more. And I have figured it out mathematically, at the end of the term when the bond will

mature, they will actually profit by the sum of $1425.

The objectors refer principally to the Marshall case and to the Green case, which was decided recently by our Court of Appeals. In those two cases the money was put up by the corporation itself to eliminate the public stockholders. For instance, here's some of the language used in the Marshall case. They say in the present case,the merger itself constitutes a fraudulent scheme because it represents an attempt by the majority stockholders to utilize corporate funds for strinctly personal objectives.

Similar language is used in that opinion.

In the Green case, likewise, similar language is used. In this case the money is not put up by Indian Head or any of its subsidiaries. It is put up by the controlling stockholders themselves. It is quite different.

Taking all matters into consideration, even if we consider that there is some possible legal claim, which I calim there is no legal claim by the objectors, then in such event, the Court simply has the power to eliminate all claims and settle the case.

I respectfully submit, your Honor, the settlement is good, sound and for the benefit of all parties. The fact is that no one objected, only one objector out of

many thousands of stockholders. That in itself is an indication that the settlement is fair and reasonable.

THE COURT: Thank you, Mr. Weinstein.

MR. SKLAVER: I am Harvey Sklaver. I am associate counsel on the Shamrock case.

Shamrock is a warrantholder and a stockholder. And I think my problem here today is a lot less difficult than Mr. Klein's and Mr. Weinstein's because there are apparently no objectants with regard to the warrants and the stock.

Nevertheless, despite the absence of objectants, I think we must still bear the burden of persuading the Court that the settlement is reasonable and desirable and beneficial.

The stockholders are to receive on this settlement $32 a share, independently of Mr. Klein's analysis and his expert's analysis, Mr. Whitman. We have retained an expert who has independelty, without seeing Mr. Whitman's analysis, advised us that $32 is a fair price for the stock.

In addition --

THE COURT: What is your expert's name?

MR. SKLAVER: Robert Winston, of Winston, Perry & Company.

A copy of his opinions are annexed to Mr. Landis' affidavit.

With respect to the warrants, the warrantholders are to receive $4 a share net. Mr. Winston has made the calculation and the determination that in his opinion the fair market value of the warrants today is about $8 per warrant. Taking that $8, I say to myself, when I take this case to trial and assume that I win, and assume that the Court determines that the fair value is $8, not a lesser amount after a trial, but the full $8, and after the allowance of counsel fees and expenses of trial, and the fees and costs and expenses of a special master who is going to have to supervise filing of claims, the proof of claims, the disbursement of funds, I calculated that each warrantholder would receive approximately $6 per warrant on, as I say, the assumptions (1) that we win, and (2) that the Court after all of the experts have presented their testimony, including the defendant's experts, that the Court finds an $8 value.

So I say to myself, in the interests of the warrantholders, can I in good conscience reject a $4 settlement offer, $4 net now for the possibility of receiving $6 maybe a couple of years down the line, and maybe a couple of years down the line if they win, maybe it wouldn't be $6;

maybe it will be $5 or $4 or $3. And on balancing all those factors, it is our recommendation that on behalf of the warrantholders, a $4 settlement price today, bearing in mind it is the settlement of a lawsuit which is vigorously contested, I think that is eminently fair.

Furthermore, I am informed by Mr. Landis that since the notice of this settlement has been distributed to the members of the class, he has received telephone calls from representatives of two brokerage firms and from approximately three or four individuals and each of those callers had indicated that they were in favor of the settlement with respect to the warrantholders.

They were only warrantholders and had no interest in any other facet of the case.

Shamrock, which is a substantial warrantholder, as well as a stockholder, has agreed to the fairness of the settlement.

There was one additional factor which is going on in my mind, and it is with regard to the merger which was aborted about some number of months ago in light of the Marshall and Green cases. True, Green is on appeal, and the United States Supreme Court has granted certiorari.

But, nevertheless, subsequent decisions of the Second Circuit have clarified the Court's thinking in

the Marshall and Green cases and I am not at all certain that if the defendants attempted now to effect a merger at this time, whether it be a short form merger or a long form merger, they would not be successful.

There would be a trial, there would be a lawsuit, and maybe we could enjoin the merger and maybe we could not. But if we enjoined it, we could only enjoin it pending a trial, I think. And ultimately I have a strong feeling that the merger must be successful and a lawsuit would only determine how much money should be paid to the warrantholders and the stockholders, which brings us right back to where we are now.

Why have a merger, the settlement perhaps disapproved, the defendants go through a merger, there is a lawsuit, and the Court decides how much they should get, when today we have I think agreed upon what is a very fair number; consequently, on behalf of the warrantholders and the common stockholders, I would strongly urge that the settlement be approved.

And if I may mention one housekeeping factor, one fact, Mr. Klein offered a number of exhibits and the question was whether they should be admitted into evidence or merely marked, I would ask that they be admitted into evidence.

There are objectants; as a matter of universal logic, the Court may approve the settlement, the objectant may appeal, and consequently I would think it very helpful if Mr. Klein's exhibits would be a part of the record in the event there were ever an appeal in the matter.

THE COURT: They are a part of the record now, but so there is no doubt about it, they are in evidence.

MR. SKLAVER: Thank you, your Honor.

MR. KLEIN: Your Honor, Mr. Sklaver, I think, may not have known, and I think the record should be clear, I think I said it, but 3271 shares of common stock have been opted out. 1050, Mr. Tussio, objected. There were no objections to the warrants. I understand from Mr. Taylor that we received between 150 and 200 telephone calls, we received over a hundred letters, we replied to more than 75, and there were none of those representative objections other than is reflected in my affidavit.

THE COURT: Are those figures you just gave me in the affidavit?

MR. KLEIN: No, sir. Mr. Taylor just gave them to me.

Do you want me to supplement them?

THE COURT: Yes, please.

MR. KLEIN: Mr. Taylor tells me that many of the

telephone calls were from brokers representing thousands of shareholders, asking: How do I file?

THE COURT: If you will give me an affidavit, I'd appreciate it.

MR. KLEIN: I will be pleased to do that.

THE COURT: Is there any other defendant who wants to add to what Mr.Blanc has to say?

MR. ROSENMAN: Cravath, Swaine & Moore. We represented the indicated defendants who are directors or officers of Indian Head.

I would only like to state for the record that these defendants do not have any burden under the settlement. They are holders of various securities of Indian Head, therefore, they are interested in the settlement as far as the plaintiff class.

They, when the merger was proposed at $30 per share, thought that the merger, the terms were fair and equitable. Obviously they think and believe the terms are today at least fair and equitable and indeed very generous.

I'd also like to say on the issues, that they have been handled completely in the briefs submitted by the plaintiffs and defendants and as far as those issues are concerned, the defendants believe that if -- the individuals -- believe that the issues are quite clear and that the defendants

ought to prevail.

They therefore believe that the settlement is indeed generous to the plaintiffs.

THE COURT: Thank you, Mr. Rosenman.

Anybody else for the defendants?

I'd like to hear from the objectors.

Before you begin, Mr. Rome, I have just been handed a note that there is a Mr. Bronzaft.

You are an objector?

MR. BRONZAFT: Your Honor, I think I would be put into that class but in a completely different vein from what I gather Mr. Rome is going to be speaking on. I was wondering if I might be heard for about three or four minutes.

MR. KLEIN: Your Honor, the notice provides that any objectant in order to object must file within ten days. He failed to do that. We are entitled to have some notice.

THE COURT: Mr. Bronzaft, I will give you three or four minutes.

You are an attorney?

MR. BRONZAFT: Yes, sir.

THE COURT: Who do you represent?

MR. BRONZAFT: We represent a stockholder,

Murray J. Rosen.

THE COURT: A stockholder of --

MR. BRONZAFT: Indian Head.

We have been prosecuting a stockholders derivative action on behalf of Indian Head in this court for better than three years. The case is called Rosen v. Drisler. We believe and Judge Cannella belives it to be a very unique 16B action. It also has common law ground and 10b ground, and the case, if we win it, and we think we have a fair chance of winning it, would be worth about a half million dollars.

Motions came on for summary judgment about two years ago before Judge Cannella. He asked the SEC to file an amicus brief. In fact, there is a letter that went from Judge Cannella's then law clerk to all counsel in reference to the case, which indicates that the case, forgetting the dollar value, is a case of some more than passing significance. In fact, the judge suggests that it has an impact reaching far beyond the rights of the parties involved.

We have been speaking to Judge Cannella's chambers. I know that the case is now on a day-to-day basis in the way of a decision and we are hoping and we thought very possibly, and that is what held us up, that a decision

would have been forthcoming by hopefully today.

I spoke to Mr. Fried, who is one of Judge Cannella's law clerks, last night and he said no, it would not be ready today, but it might be down by Friday, certainly no later than early next week.

In light of what is happening here, we felt the stockholders are entitled to get a decision because we feel there is a very good chance that there is a half million dollars in assets, that includes interest, $430,000 plus interest that is involved.

I hadn't realized there would be any other objection, and I gathered from our bringing of cases and settling of [illegible]s that decisions are usually not made from the bench on cases of this magnitude. I felt that we had to come down and let you know that this case was imminent, coming down, worth a half million dollars, and I don't know that there was any consideration or any valu placed on the case in the negotiations that the parties had.

THE COURT: All right. You just wanted everybody to be aware of that, I take it?

MR. BRONZAFT: And to find out if there was any value on this. In that sense I guess we would be an objectant to the case being settled right now.

THE COURT: What is the name of that case?

MR. BRONZAFT: Rosen v. Drisler.

THE COURT: Are these copies that I can keep?

MR. BRONZAFT: Yes, your Honor.

THE COURT: The other action I see is Rosen v. Drisler, 73 CA 3367.

I have just received a copy of the complaint in that action and also a copy of a letter from Mr. Kaplan, law clerk to Judge Cannella, dated August 16, 1975.

Do you have a copy of that letter?

MR. KLEIN: Their letter of January 16 was just handed to me,yes, sir.

THE COURT: Are you aware of that other litigation, Mr. Klein?

MR. KLEIN: No, I never heard of it, your Honor.

THE COURT: Perhaps you ought to find out something about it. I'm not about to issue any decision today, Mr. Bronzaft, and I doubt that I'm likely to do it in the next couple of days.

I would appreciate it if counsel would look into what Mr. Bronzaft has just been telling us and advise me in due course as to the significance it has, if any .

MR. KLEIN: We will do that, your Honor.

MR. SKLAVER: Mr. Bronzaft says that the claim, the 16b claim, if successful, will produce approximately

half a million dollars. I think there are in the neighborhood outstanding of about five million shares of Indian Head-- close to six million. So we are talking about less than 10 cents a share.

THE COURT: Let's defer on that for the time being. I don't think we are going to do anything in the near future which will create any problems for you, Mr. Bronzaft.

All right, Mr. Rome.

Incidentally, gentlemen, I am quite certain that I'm not going to hear all I want to hear today. I have got quite a number of questions in my mind, some of which I may find the answers to in your papers, some of which I am pretty sure I won't find because I have looked for it.

My notion is that we will have to meet at least once more. We can discuss that before we break up today. But I have in mind next Monday. I thought you all ought to have that in mind. If any of you feel that you have things you would like to say which either you have not said so far or you have not had an opportunity to speak on, you will have an opportunity to do so.

Yes, Mr. Rome.

MR. ROME: With the permission of the Court, I ask leave to submit and offer in evidence as Objectant

Exhibit 1, a document which is an affidavit which merely contains the full text of the indenture between Indian Head, Inc. and Marine Midland Grace Trust Company of New York as trustee, which is the indenture on the basis of which the convertible debetnures that are involved in our phase of the case were issued.

It is my undersatnding, sir, in light of listening to that which has thus far been said here, that that full indenture has been made available to the Court as part of the record of this hearing, and obviously it is imperative in our respectful submission that the Court have that in front of it.

I also--

THE COURT: I appreciate receiving this, Mr. Rome. I think I have several copies of it already.

MR. ROME: There had been no references today made earlier in this proceeding to today, sir. That's why I took the liberty of submitting it to you. I would intend in the course of my brief argument to invite your Honor's attention to certain provisions in that indenture which form a critically important basis our our objection here.

If the Court please, I would also request the opportunity to file promptly a short reply memorandum to that which we have just been furnished today by way of

briefs from the plaintiffs and the defendant which we have received this afternoon and recognizing that your Honor has spoken in terms of a further hearing on Monday, we would do our best to have a further very brief comment that would be merely answering the suggestion and statements that are made in those matters that have been filed, as I understand it,with the Courtyesterday, and which we received today.

I would also wish to make clear, not only to the Court, but to all counsel present that as counsel for the objecting parties here, we are not seeking to intrude into the Court's affirmation of the settlement if that is the conclusion that your Honor reaches insofar as the common stock is concerned or the warrants are concerned, nor indeed do we seek to prevent those holders of convertible debentures who assent to that which is being proposed here from indeed assenting.

Our contention is that it is not possible under the indenture, under the debentures that were issued in connection with the indenture and under the applicable law, both the law of New York, of Delaware, the Federal Securities Laws, and indeed, your Honor, the Constitution of the United States, for these protagonists here, who are advancing this settlement, to take away the contractual right of those holders of convertible debentures, who do not wish to

participate in this proposed settlement and who do not assent to having terminated their right to convert their debenture in due course at a time of their choosing the common stock, whether it be of Indian Head, Inc. or of the merged surviving company, if such there be.

It is that contention that we advance upon your Honor with full respect to all of those parties and counsel who have taken a contrary view.

I would wish to bring to the Court's attention further an inquiry that your Honor made of Mr. Klein when earlier this afternoon you asked him whether the reason why the first merger was withdrawn was important.

It is interesting to note on this record that Mr. Klein said, in response to that, as nearly as I could hear from where he sat, and the record will disclose what indeed he did say, that he was unable to inform the Court as to why that first merger was withdrawn, although he speculated about the fortuitous event of the Marshall and the Green case.

But that hiatus has been supplied, I believe, by Mr. Blanc speaking for Shearman & Sterling, who said that there were genuine business purposes in back of the marger and that there were a variety of reasons, including the fact that in the judgment of Mr. Blanc and apparently

of his firm, the Second Circuit Court of Appeals, in announcing its decision, had not made its position sufficiently clear for counsel to understand there what the Court was saying.

The point that I make, your Honor, is that no where in the notice that has been sent out to the convertible debenture holders and to the other recipients of the notice in this case was there any disclosure of the reason why that first merger was withdrawn, and indeed, if the reason back of that withdrawal was what the Second Circuit had decided, I respectfully submit that that was a material fact which the recipient of the notice had a right to learn, so that they could make their own judgment as to the propriety of what was being proposed.

Beyond that, your Honor, since Mr. Blanc suggests that there were very important business reasons why his clients, the Thyssen Group, were desirous of effecting not what Mr. Klein refers to as a freezing in, but which we refer to as a freezing out of the minority, I respectfully suggest that there was a right on the part of the convertible debenture holders who do not assent to this proposal, to go along and have the benefit of exactly that which the Thyssen Group feels is so important in the future of this corporate entity.

In that regard, your Honor, Mr. Weinstein makes the suggestion that if we were prepared to accept the cash which is thus offered we can go out and invest in something else and make a few dollars more, in his calculation. So, too, Mr. Klein speaks in terms of our having a right to have cash.

But these gentlemen seem not to be fully aware and cognizant of the purpose back of the purchase by an investor of a convertible debenture. And in that regard, your Honor, may I bring to your attention the language of the Second Circuit in Gamert v. Boeing, on page 41 of our memorandum to the Court, Judge Oakes said: What one buys when purchasing a convertible debenture in addition to the debt obligation of the company incurred thereby is principally the expectation that the stock will increase sufficiently in value that the conversion right make the debenture worth more than the debt.

And we have, it seems to me, acknowledged on the basis of this record coming from Mr. Blanc himself here, that there is an expectancy in the future which these holders of convertible debentures who do not assent may not have taken away from them.

Your Honor, the reason why I most particularly attempted to invite your Honor's attention to the indenture

pursuant to which the convertible debentures were issued, is that significantly there has never, to the best of our knowledge, been brought to your attention, or indeed to the attention of the holders of the convertible debentures who were the recipient of the notice that went out, the provisions of the indenture which make impossible and illegal that whichis sought to be accomplished here, to wit, the termination of the conversion privilege without the written assent of each debenture holder who is the owner of a convertible debenture.

In that regard, sir, there is, therefore, our contractual right under New York law and since there is also a Delaware corporation being involved, we have cited on our brief Section 259 of the General Corporation Law of Delaware which is attached as the very last page of our brief.

Your Honor, on page 88 and page 89 of the indenture which is attached to the affidavit handed up to you, there appears Section 12.02 of the Indenture, which spells out that with the consent of not less than 66-2/3% in aggregate principal amount of the debentures at the time outstanding, the company when authorized by a resolution of its board of directors and the trustee may from time to time and at any time enter into an indenture or an indenture

supplemental hereto. And then I skip, your Honor.

... Provided, however, that no such supplemental indenture shall (1) extend the fixed maturity of any debentures or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption proof or alter or impair the right to convent the same into shares of common stock at the rates and upon the terms provided herein without the consent of the holder of each debenture so affected or,

(2) reduce the aforesaid percentage of debentures, the holders of which are required to consent to any such supplemental indenture, without the consent of the holders of all debentures outstanding.

YourHonor, if I may further invite your attention to page 98 where in Section 16.09, it is stated:

This indenture and each debenture shall be deemed to be a contract made under the laws of the State of New York and for all purposes shall be construed in accordance with the laws of said state.

I also invite your attention to page 37 of the indenture wherein Section 5.07--

THE COURT: Before we turn back, the proviso you have just read talked about a supplemental indenture.

Is that what we have here?

MR. ROME: There has been no such, your Honor.

THE COURT: Then why do you direct me to that proviso?

MR. ROME: Because in our contention the indenture says that there may not be any adverse effect of the rights held by the convertible debenture holder without the written consent. The situation under which it may be done at all is set out there, and that which is being sought here does not fit within any provision of the indenture itself. That is the reason why I invite your Honor's attention to that language.

THE COURT: That Section 12.02 says that the company may enter into a supplemental indenture.

Does thatmean that that is the only way that the rights of the debenture holders can be changed? It doesn't say that to me as I read it.

MR. ROME: If your Honor will permit me to continue I will point out the fact that even in connection with a merger there is language which has been referred to by Mr. Klein and others and to which I would advert, which I believe will further elucidate my point in that regard.

THE COURT: All right. You want me to look at

what page?

MR. ROME: 37, your Honor.

THE COURT: Yes.

MR. ROME: Section 5.07 provides that the company covenants that it will at all times reserve and keep available out of its authorized common stock solely for the purposes of issuance upon the conversion of debentures as herein provided, such number of shares of common stock as shall then be issuable upon the conversion of all outstanding debentures.

That language, your Honor, follows the section which my friends for the proponents of this settlement have attempted earlier to emphasize, and that is Section 5.06 which appears at the bottom of page 36. And the top of 37.

In our contention, that language says that in connection with a merger there has to be an assumption by the surviving company of all of the rights and obligations which are involved, and again refers to a supplemental indenture in connection with that, and I stress the fact that there has been no attempt to the best of my knowledge to issue a supplemental indenture in this case.

We have here, your Honor, a class action in which there has been a determination of a class for purposes

of settlement only. We have attempted to point out in our brief that at least the Manual for Complex Litigation, your Honor, deplores that practice and suggests that it ought not to be followed.

My friends in their reply, which I have had an opportunity to look at very briefly, has said that this is a provision which has been honored in the breach.

I can only suggest that to the best of our knowledge, your Honor, and your court has not yet thus held, and we would respectfully urge upon your Honor that the provisions of the Manual for Complex Litigation, which are set out in our brief at page 20, suggest that the determination of a class for settlement purposes only is an improper practice.

I advance that with great respect to the Court.

THE COURT: The Court of Appeals in the Grinnell case takes a somewhat different view of the significance of the manual, doesn't it?

MR. ROME: I understand the emphasis that my friends attempt to lay upon that. In view of the lateness of the hour, with your permission, your Honor, I would intend to set forth a further comment on that in the short reply memorandum which your Honor will permit me to file.

THE COURT: Judge Moore says, referring to the argument that was made, that the class was created for the purposes of settlement only, the argument being that this was inconsistent with the manual, he says, to whatever-- and the District Court approved the creation of the class for settlement purposes only, Judge Moore says, to whatever minimal extent the action of the District Court violated the provisions of the manual, it did so by applying the law in this Circuit.

MR. ROME: Your Honor, in the Grinnell case and I belive we will be able to set this out at greater length, there was no conflict with regard to the nature of the representation.

Here by definition we have a conflict because Mr. Klein, as I understand it, sir, is undertaking to represent holders of debentures, convertible debentures, who are prepared and do indeed assent, but under those circumstances, he could not possibly undertake to represent convertible debenture holders who do not assent.

In that regard, your Honor, may I stress the fact that--

THE COURT: Apart from your argument about the fact that each debenture holder may have a contract, and I don't mean to suggest that I don't think we will have

that argument, but isn't it typical of a class proceeding that some people are happier than others?

MR. ROME: I am bound to recognize and acknowledge, sir, that that is not untypical. It does indeed happen. That does not militate, I respectfully suggest, against--

THE COURT: And if you were not happy with the settlement, you can opt out.

MR. ROME: But your Honor, in order to be able to proceed with our objection and to preserve the rights of my client, in order to have a right to appeal,we have to refrain from opting out. It would be very simple for us to opt out and thereby abandon that which we feel so strongly about here as a matter of legal right under the laws that we have attempted to set forth in our brief.

THE COURT: Couldn't you assert your rights in a separate action?

MR. ROME: That we indeed intend to do, your Honor.

THE COURT: Doesn't that protect you fully?

MR. ROME: Not enough, your Honor. We do not feel that we can possibly avoid any opportunity which is afforded by the notice that went out to appear and voice our thoughts to the Court as well as to the other parties

involved.

We have been invited in here, your Honor. We are not interlopers. The notice went out with an invite to anybody who had an objection to come in and we have done so. And therefore this is one way in which we have a right to assert and respectfully defend our rights.

THE COURT: Of course you do. But I am just exploring an alternative.

MR. ROME: Yes, sir. In the light of your Honor's comment, might I invite your attention to the fact that although it has been repeatedly suggested that there is only one objectant here, I respectfully suggest that is hardly an accurate way to put it.

We take the position and argue to the Court, on the contrary, that in actuality, all those who have failed to assent in writing, accepting the proposal that is here, are indeed objectants, and based on the documents that we had earlier received, to the best of my calculation, your Honor, out of some fourteen million, two hundred ninety five thousand aggregate amount of convertible debentures outstanding, there is opposition voiced by fourteen million, fifty-seven thousand dollars worth.

Mr.Klein attempts to suggest here that he has received some additional assents by some additional holders,

and while I do not dispute his language or his contention, it seems to me that at most there is nevertheless well in excess of twelve and a half million dollars of convertible debenture holders who have not filed their assent in writing to this proposal.

THE COURT: Before you go on to another point, I'm not entirely clear why you think the class representatives here do not represent all convertible debenture holders.

MR. ROME: There is on the face of it -- I was intending to suggest for your Honor's thought, that since Mr. Klein undertakes to represent those who assent and propound this proposed settlement, it cannot be that he is capable of speaking for those who take a very contrary view that this is not a proper settlement, in the light of the fact that there is an improper illegal attempted termination of the conversion right held by those who do not assent.

Therefore, there are two groups within the convertible debenture group. I readily acknowledge his ability and right to speak for those who indeed assent, but I equally would press upon the Court the view that he cannot properly act--

THE COURT: The class is not those who have

assented, is it?

MR. ROME: I think your Honor indeed the class starts out with the entire body of holders of convertible debentures.

Thereafter you have two distinct groups. There are those who assent and those who do not.

Thatis an inescapable conclusion in light of the fact of our basic contention that there was an inalienable contractual right granted by the indenture and there was a purpose back of the investors who bought a convertible debenture, the expectancy to be able to ride along with Mr. Blanc's clients hereafter, and have the benefit of that conversion right at a time when presumably the Thyssen Group want to hold on to this stock, it will be at a higher level than that which now exists.

In this regard, your Honor, on the last page of our brief there is set out Sections 259 of the Delaware Corporation Law, and we have here--

THE COURT: I am interrupting and I am slightly changing the subject, but not much. Suppose when all is said and done, I overrule your objections and approve the settlement so that it binds presumably the non-assenters who have not opted out, and I am assuming also that there would be an appeal from that, and suppose you lose all the

el:mg

way, and in the meantime you have brought another lawsuit--I guess you can't bring another lawsuit now, can you?

MR. ROME: We think we can, your Honor. We are in the throes of preparing it.

THE COURT: Wouldn't the result of this matter have something to do with the validity of that other lawsuit?

MR. ROME: I am bound to acknwledge, sir, it would have something to do, but I respectfully submit that it would not bar our doing that.

THE COURT: No, it certainly won't bar your bringing a lawsuit.

MR. ROME: We cannot be res judicata of our rights, your Honor, in our submission. And we would intend to bring that other suit to protect our rights and those of others who have not put their assent in writing.

THE COURT: What I am speculating about, I think I will defer continuing speculation on it until some other day. Go ahead, Mr. Rome.

MR. ROME: Your Honor has been very patient with your time. I would merely wish to say in closing two things: We do not want to abandon any of the arguments which we have set forth in the brief heretofore submitted, your Honor, particularly with reference to the securities

laws and the applicability of the Delaware and New York law and the Pennsylvania securities law, and, moreover, we particularly invite your Honor's attention to the Act which is set forth on page 18 of our brief because in our contention, the Rule 23 cause of action was not intended as the Supreme Court has said, to affect and alter substantive rights, and when Mr. Klein's clients attempt to alter the substantive rights that my clients have to maintain their right of conversion, then I suggest there is an abuse of the use of Rule 23.

With your Honor's permission I hope that you would permit us to --

THE COURT: On that, it isn't the class action which is altering your rights, it is the settlement.

MR. ROME: And the class action form under 23 cannot be used to alter that substantive right. That is precisely our point, your Honor.

THE COURT: It doesn't seem to me that the class action is what is altering your rights, is it, whatever rights it is you are talking about? Isn't it the settlement which changes things? It is not the class action procedure which is changing things. The class action procedure is a way of arriving at or at least accomplishing the settlement. But the settlement is what changes rights, it seems

to me.

MR. ROME: It is the settlement being performed or prmoted through the vehicle of the class action form utilizing Rule 23, seeking to bind the rights of a variety of persons and taking away in this effort their substantive rights, which is precisely the point that I contend that the Rules Enabling Act and the Eisen and other cases that are cited at page 18 of our brief preclude as a matter of law.

THE COURT: By creating a class, the Court hasn't taken away anybody's right, has it?

MR. ROME: Not by creating a class as such, your Honor, but--

THE COURT: If you are right about this contract notion, your rights are being affected by the settlement.

You could protect your rights against the class action procedures by opting out.

MR. ROME: But that refers again to the point I have attempted to make earlier, sir. But that settlement could not come about and affect our rights without the aegis and the mechanism which is sought to be used by the plaintiffs and the defendants of the Rule 23 format.

THE COURT: It seems tome that it is possible, I suppose, and I don't mean to suggest anything other than

what I am about to say, that if it is appropriate for you to proceed the way you are, perhaps you can get the benefit in the end of the settlement if you want it, but if you don't, you can get the benefit of your separate lawsuit. Maybe this is perfectly appropriate, I don't know.

MR. ROME: We do not think there is any benefit to a convertible debenture holder whom I represent, in light of the fact that his bargain, which was the expectancy, being taken away.

THE COURT: I understand your position on that.

All right. As I have indicated -- is there anything else, Mr. Rome?

MR. ROME: No, sir.

THE COURT: As I have indicated, gentlemen, I have not thoroughly digested the papers I have seen and there are some papers I have received in the last few days which I know I haven't even seen. And I have a number of questions which are already in my mind which I haven't had the chance to ask yet today and I know if I embarked on just the questions I have in mind today, we would be here a while.

I may be able to answer some of my questions with a little homework on the matter.

What I'd like to do is to adjourn now and plan

to meet again on Monday.

MR. KLEIN: Your Honor, could I have a few minutes while Mr. Rome's arguments are fresh to respond quickly?

THE COURT: Yes.

MR. KLEIN: I have responded in my brief. I have spent 33 years at practice, your Honor, dealing with a lot of novel situations and I feel like Alice in Wonderland.

I think that it gets curiouser and curiouser. I had a lot of trouble with the brief but when Mr. Rome expresses it orally, I have more problems. I will touch briefly on a couple of things. I really think the key maybe was at the end when Mr. Rome says that each convertible debenture holder had an expectancy to ride along.

What he is overlooking and he knows the law as well as I do, thatthe law of Delaware, Pennsylvania and all the other corporate laws are part of the contract and one of the parts of the contract is the right to merge.

A corporation has a right to merge, and it is incorporated in the contract. It is specifically provided in the contract. The concept beggars my credulity that somebody has to come in, in writing, to oppose the settlement. I can't think of a better illustration, your Honor.

In the Tally case we offered every stockholder, I believe, $6.42. He didn't have to do anything. He just had to sign names to a piece of paper. And would you believe it, 25% didn't sign the piece of paper to collect $6.25.

I have a sister, your Honor. She doesn't open hermail for weeks. There are people like this. But for him to talk in terms of writing in to specifically accept, there is no such law and I don't want to beat it. The papers are served, our opposing papers were served yesterday, two copies went to his counsel.

Mr. Rome is in Pennsylvania. If there is an implication there, it bothers me.

As far as Grinnell, I have given your Honor a copy of Judge Lasker's opinion, which is, I think, on July 30th. I think it was filed July 6th.

And Bonem, in which Judge Lasker specifically cited Grinnell, as you did, your Honor, specifically said that this kind of a settlement as contemplated here, is correct. So it has been interpreted in this Circuit.

I don't understand Mr. Rome. I don't know what part of Mr. Rome to believe. His papers say they object to the settlement -- this is page 30 -- are for the purpose of blocking its approval, and are in the nature of an

application for an injunction to prevent it from becoming effective.

That's page 30 of his brief.

Now he comes into court and says:Oh, I didn't mean it, I am only talking about the debentures, I'm not talking about the warrant and the common stock.

Like Alice in Wonderland. I don't know what part of the looking glass to look into.

He talks about a breach of contract to convert into common stock and I think we have covered that.

I wish he were right. I'd like 1033. No one ever accused me of having any humility, but even I cannot recall ever having advocated with that kind of certainty, immutable, inalienable Constitutional right to money.

I don't think it follows in 1776 or 1787. I don't think they were given constitutional rights to money. Frankly, I find that whole concept very difficult. It is very troublesome to me because the whole idea of a settlement is to try to settle. Obviously you don't settle that which is in your pocket. I may be aberrational but I don't think I am crazy. And surely there is room for substantial doubt. I don't think there is any doubt, myself,under the Boned case, under Section 506. I just don't see it. But Mr. Rome has a fantastic reputation as one of

the ablest lawyers in the country and I don't understand how one of the ablest lawyers in the country can be creating what seems to me to be a fantasy.

He talks about the Green case, for example. I like the Green case, obviously. I don't know whether the Supreme Court is going to like it as much as me. But when you talk about the Green case, the Green case was talking about $151 against 722 and it was talking about a unilateral deal. The company talked to itself, it said: We will offer 151 bucks, so it offered 151 bucks and the Second Circuit said that is not fair.

Obviously it is not fair. What you have here for the first time and it is unique is that the stockholders were represented. I'm sorry that Mr. Rome is not satisfied with my representation. But they were. It was obviously an arms length negotiation and I don't have to protest about it. I think the idea that you can get a 10% minority bargain with the 90%, that is exactly what didn't happen in Marshall, it is exactly what didn't happen in Green.

What happened here? I think what he is overlooking is the tremendous unit. You put a little key, they are in an economic jail. And we are now freeing them. And Mr. Rome is standing here-- I don't want to talk about

him as a trustee, and I don't know who are the beneficiaries of the trust, but I think he should withdraw his objection. I think he should be delighted that we are giving him an opportunity to get $844, unless the only voice Mr. Rome hears is his own.

A couple of other points, your Honor. We brought a suit on his claim. He is telling me we can't settle it. I wish he were right because if he were right I would be here until hell freezes over.

He talks about thoughts, the opportunity to give thoughts to the parties. He is going to give thoughts to the parties. He has been in here for three years. Morton Rome talks to me. I never got a thought. I never heard a word.

I am troubled by the bona fides because, your Honor, I really take this very seriously and I take the responsibility and obligation very seriously and I am really disturbed. I am disturbed by somebody coming in and giving an objection which looks to me comical.

In the theatre sometimes there is a scrim in front of the stage and it is very thin and you can barely see through it but you can see the shadows and outlines.

Mr. Rome has created a scrim. As far as the notice is concerned, I will rest on that because he has hit

me at my pride. I think that notice is the best I have ever seen. I have sent it to other lawyers in the field. I have received letters which I won't put in the record. One lawyer, well-known in the field, wrote me a letter and he said,"You ought to be disbarred because your notice is so clear."

I think that it is extremely important that we keep in mind, your Honor, that this is a settlement and that all Mr. Rome had to do was opt out and what I resent is his coming in here and he is asking to have his cake and eat it, too. He could opt out but he didn't want to because he was afraid he would lose, so he comes in here certain to get his 844 and he is trying to enjoin an entire settlement.

I think it unfair and I think it is unfair to the security holders and I am very upset by this.

Thank you.

MR. SKLAVER: May I have a brief moment?

Mr. Rome hasn't addressed the warrantholders and stockholders directly but we are directly affected inasmuch as if this settlement is disapproved by your Honor, as to the debenture aspect, we are very slightly affected because we will not be approved either since it is a package.

I think the answer is, your Honor, as you pointed out to Mr. Rome, opt out. I think the answer to opt out is very simply this: If I opt out nothing that appears in this lawsuit will in any way affect him.

If your Honor says, by approving the settlement, that Thyssen can go ahead and merge Indian Head and that the rights of the debenture holders are cut off, if that is what your Honor says, and they put in their papers, and that is what they go ahead and so, a debenture holder who has opted out is not barred.

He can go to Delaware, he can go to a New York Court and say you have a merged company, I have a right to buy stock in that new merged company. You went ahead and did it against my rights, you can't do it against my rights. I was not part of the federal lawsuit, I did not participate in it, I am not bound by it.

That lawsuit between Shamrock and Indian Head and Thyssen can in no way affect my rights. It is very simple, simply that any determination in this Court, if he opts out, will not in any way touch his rights. He can go ahead and bring his action for declaratory judgment and maybe he will get a judgment that the new merged company has to give him the right to buy stock. That is his right. And if he opts out, that is the way he presumably would

proceed. But that should in no way affect that settlement if he opts out. Anything that happens here in no way affects him beneficially nor adversely.

THE COURT: All right.

Mr. Rome -- yes, Mr. Blanc?

MR.BRONZAFT: A word or two. I understand your Honor hasn't had a chance to see ourpapers. One of the disadvantages we had in responding to Mr. Rome's papers was that of the four sections he mentioned today, he mentioned only one. In our papers --

THE COURT: Which papers are you talking about?

MR. BRONZAFT: Our memorandum in response to the objection, your Honor. So we think we have addressed them. There is one minor point I'd like to make because since it wasn't in Mr. Rome's papers and we couldn't anticipate this, he has mentioned Section 507, which, of course, does relate back to Section506, and I would emphasize that the key word in Section 507 is the second word from the end of the fourth line, "then" meaning the number of shares then issuable which in the case of a Delaware short form merger for cash, is zero.

Thank you.

THE COURT: Mr. Rome, when do you expect to have your responding papers to me?

MR. ROME: I would do my best, sir, obviously, to have it not later than the next hearing. If it is humanly possible to have it before, I shall transmit it not only to the Court but to other counsel.

MR. BLANC: If I may speak to that, that is going to create a rather interesting procedure where we get Mr. Rome's papers and we come here--

THE COURT: Tha is what I am thinking about, Mr. Rome. I know this doesn't give you a lot of time. You arelocated in Philadelphia, aren't you?

MR. ROME: Yes, sir.

THE COURT: Is it possible for you to get your papers together and have them here in New York by the end of Friday?

MR. ROME: I respectfully doubt it. This is a matter of sufficient importance that I hope your Honor would permit us at least to do the kind of job that is required in light of all of this. There is a great deal at stake and it puzzles me why opposing counsel should feel that a few days represents that kind of problem. It touches really on something, as a matter,that I beg leave, as a matter of privilege to comment about. That is the first I have heard of it in my more than 35 years of practice, to have my bona fides impugned. I take it Mr. Klein

CERTIFICATE OF SERVICE

Re: 76-7578
Brucker, v. Thyssen-Bornemisza Europe, etal

STATE OF NEW JERSEY :
: ss.:
COUNTY OF MIDDLESEX :

I, Muriel Mayer, being duly sworn according to law, and being over the age of 21 upon my oath depose and say that: I am retained by the attorney for the above named Appellants.

That on the 20thday of January, 1977, I served the within

Appendix (Volume 3)

in the matter of Edward Brucker, etal v. Thyssen-Bornemisza Europe, N.V., etal

upon

(See attached list)

by depositing one (1) of Appendix (3d Vol.) true copies/of the same securely enclosed in a post-paid wrapper, in an official depository maintained by the United States Government.

Muriel Mayer
Muriel Mayer

Sworn to and subscribed
before me this 20th day
of January 1977.

Lorraine Leotta
A Notary Public of the
State of New Jersey.

LORRAINE LEOTTA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 13, 1977

Brucker v. Thyssen-Bornemisza Europe, etal

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